

(28,954)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 404.

THOMAS D. MCCARTHY, UNITED STATES MARSHAL FOR
THE SOUTHERN DISTRICT OF NEW YORK, APPEL-
LANT,

vs.

JULES W. ARNDSTEIN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

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Writ of Habeas Corpus.

The President of the United States to Thomas D. McCarthy, U. S. Marshal for the Southern District of New York:

We command you, that you have the body of Jules W. Arndstein, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or char-ed, before Hon. Julius M. Mayer, Judge of the District Court of the United States in and for the Southern District of New York, on the 1st day of April, 1921, forthwith, to do and receive what shall then and there be considered concerning the said Jules W. Arndstein, and have you then and there this writ.

Witness the Hon. Learned Hand, Judge of the United States District Court for the Southern District of New York, the 1st day of April, 1921.

[SEAL.]

ALEX. GILCHRIST, JR.,
*Clerk of the District Court of the
United States for the South-
ern District of New York.*

The foregoing writ is hereby allowed. Dated April 1st, 1921.

JULIUS M. MAYER,
United States District Judge.

Endorsed: Hearing adjourned to 1st Monday of May, at 4 P. M. but either party may move on 3 days' notice for an earlier date. J. M. M., D. J. Apr. 1, 1921.

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Return to Writ of Habeas Corpus.

District Court of the United States for the Southern District of New York.

JULES W. ARNDSTEIN, Petitioner,
against

THOMAS D. MCCARTHY, United States Marshal for the Southern District of New York, Respondent.

STATE OF NEW YORK,
*City and County of New York,
Southern District of New York, ss.*

Thomas D. McCarthy, being duly sworn, deposes and says: that he is the United States Marshal for the Southern District of New York and that as such he is in charge of the above entitled Matter and has the custody of the above-named prisoner; and on oath makes the following return to the writ of Habeas Corpus as the respondent thereto:

1. As to each and every allegation contained in paragraph numbered "First" of the petition respondent denies that he has knowledge or information thereof sufficient to form a belief.

2. He denies each and every allegation contained in paragraph numbered "Second" of the petition.

3. He admits that the petitioner is held by this respondent by virtue of an order made by Mr. Justice Manton sitting as District Judge for the Southern District of New York on or about the 15th day of September, 1920, which said order committed the petitioner to the custody of this respondent for contempt in refusing to answer certain questions propounded to the petitioner before and in

3 the presence of Alexander Gilchrist Jr., United States Commissioner for the Southern District of New York, or put by the attorney for the Trustee in bankruptcy of this petitioner. Except as so admitting respondent denies each and every allegation contained in said paragraph numbered "Third".

4. Respondent admits that on or about February 20, 1920, the National Surety Company filed a petition in involuntary bankruptcy against the petitioner and that on or about the 20th day of February, 1920, a subpoena in bankruptcy was issued returnable on or about February 27, 1920. As to the allegation that said subpoena was served by delivery to a maid in the employ of one Fanny Brice Arndstein, respondent denies that he has any knowledge or information sufficient to form a belief.

5. Respondent admits that on or about the 4th day of March, 1920, an adjudication of bankruptcy and an order of reference referring the bankruptcy of the petitioner to Seaman Miller, Esq., as Referee were entered and that on or about the 18th day of May, 1920, an order for the examination of the petitioner under Sect. 21-a of the Bankruptcy Act was served upon him.

6. Respondent admits that on various dates the petitioner was examined under said Sect. 21-a and refused to answer certain questions propounded to the petitioner by the attorney for the Trustee in Bankruptcy, upon the ground that said questions would tend to defraud and incriminate the petitioner, and further affirmatively alleges that before so refusing to answer all or any of these questions

4 the petitioner without invoking any privilege against incriminating or degrading himself or any other privilege and after being duly notified by the commissioner of his privilege

against self-incrimination or self-degradation and after having on other occasions and in respect to other questions invoked said privileges or alleged privileges and while acting with the advice and guidance of counsel, did of his own accord testify to the very matters with which these questions were and are concerned and did make certain answers. The respondent further alleges that the questions which the petitioner refused (as in the petition alleged) to answer were by way of further examination or cross-examination of the petitioner concerning these matters with regard

to which the petitioner did so testify and that by so testifying he had so waived his privilege. Respondent attaches as an exhibit hereto and makes a part hereof, the entire said examination of the petitioner under Sect. 21-a of the Bankruptcy Act, including both the questions which the petitioner so refused to answer on the alleged ground that they were incriminating or degrading and also the questions which he did as above set forth answer, and further annexes hereto the testimony of all the other witnesses in the matter of the bankruptcy of this petitioner which said witnesses were also called and testified under said Sect. 21-a.

7. Respondent admits that on or about the first day of June, 1920, an order to show cause to punish the petitioner for contempt was signed by the Hon. Augustus N. Hand, United States District Judge for the Southern District of New York and thereafter served upon the petitioner.

5 8. Respondent admits that on or about the 10th day of June, 1920, the petitioner filed certain schedules in bankruptcy, but denies that the said schedules were filed pursuant to an order of this court or under the direction thereof and alleges that they were voluntarily filed.

9. Respondent admits that on or about the 29th day of June, 1920, the Hon. Augustus N. Hand, District Judge, rendered a certain opinion (a copy whereof is annexed to the petition as Exhibit "E") and that on August 10, 1920, the said Judge Augustus N. Hand rendered an opinion directing the petitioner to answer certain questions (a copy of which said opinion is annexed to the petition and marked Exhibit "F") but respondent denies that petitioner had filed the schedules under the order or direction of this or any other court and denies that said Judge Augustus N. Hand declared in his opinion or otherwise that the said petitioner had so filed the schedules by such order or direction.

10. Respondent admits and alleges that on or about the 7th day of September, 1920, an order was entered in the office of the Clerk for the Southern District of New York directing the petitioner to make answer to certain interrogatories. (A copy of said order is annexed to the petition and marked Exhibit "H").

11. Respondent admits and alleges that on or about the 14th day of September, 1920, the petitioner appeared before United States Commissioner Alexander Gilchrist, Jr., in pursuance to subpoena served upon the petitioner under Sect. 21-a of the Bankruptcy Act and the petitioner continued in his refusal to answer questions put to him by and in the presence of said commissioner, and
6 admits that petitioner's refusal was put by him upon the ground that said questions would tend to degrade or incriminate him.

12. Respondent admits and alleges that on or about the 15th day of September, 1920 an order was entered by the Hon. Martin T. Manton, sitting as a District Judge for the Southern District of New

York, adjudging the petitioner guilty of a contempt of the court in having wilfully and deliberately disobeyed certain lawful orders of the court dated September 7 and September 14, 1920, and in having wilfully and deliberately refused to answer questions about his assets and liabilities and about his schedules. The said order (a copy whereof is annexed to the petition as Exhibit "I") further committed the petitioner to the custody of this respondent.

13. Respondent alleges that the petitioner took no appeal from the foregoing orders or any of them, and filed no petition to revise said orders.

14. Respondent admits that pursuant to the foregoing order of the said Circuit Judge Manton entered on or about the 15th day of September, 1920 and annexed to the petition as Exhibit "I," the petitioner was taken into custody by this respondent; and respondent alleges that on or about the 10th day of November, 1920, the petitioner was paroled in the custody of his counsel and continued to be so paroled until on or about the 24th day of March, 1921.

15. Respondent denies that this court was without jurisdiction to adjudge the petitioner a bankrupt and denies that the petitioner was not guilty of contempt in refusing to answer the questions asked him by or in the presence of said United States Commissioner in said bankruptcy proceeding and denies that the District Court had no jurisdiction or power to adjudge the petitioner guilty of contempt and denies that the order of commitment is or was null and void and denies that the arrest or detention of the petitioner is without due process of law or in violation of the constitutional or other rights of said petitioner.

16. As to the other allegations in said paragraph numbered "Fifth" of the petition contained and as to each of them, respondent denies that he has knowledge or information thereof sufficient to form a belief.

17. Respondent annexes hereto a complete copy of all the relevant papers and proceedings in this cause on file in the office of the Clerk of the District Court of the United States for the Southern District of New York. The papers are as follows:

Testimony of Jules W. Arndstein,

" Irving Gluck,
" Joseph Gluck,
" Rudolph Bunora,
" David W. Sullivan,
" Norman S. Bowles,
" W. W. Easterday,
" David F. Browder,
" Fanny Brice,
" William H. Washer,
" Eugene F. McGee,
" William J. Fallon.

Petition for the involuntary bankruptcy of Nicholas Arndstein.

8 Petition for the appointment of a receiver and order appointing receiver entered thereon and qualifying bond given by receiver.

Petitions for orders for the examination of the above named witnesses and orders entered thereon.

Affidavit in lieu of schedules.

Schedules of the bankrupt.

Order of Judge Augustus N. Hand directing the bankrupt to answer questions with papers in support of motion and two opinions of the court in connection therewith.

Order of Judge Manton denying the appeal from the order of Judge A. N. Hand with motion papers in support thereof and opinion of the court in connection therewith.

Order of Judge Manton denying the motion for adjournment and motion papers in support thereof and opinion filed in connection therewith.

Petition for writ of habeas corpus filed with Judge Manton and order entered denying the writ with opinion of the court in connection therewith.

Petition for writ of habeas corpus filed with Judge Hough and order entered denying the writ with opinion of the court in connection therewith.

Wherefore, respondent respectfully requests that this petition be in all respects denied and dismissed.

THOMAS D. McCARTHY.

Dated, New York, April 2nd, 1921.

9 STATE OF NEW YORK,
County of New York, ss:

Thomas D. McCarthy, U. S. Marshal, being duly sworn deposes and says: That he is the Individual named in the foregoing return. That he has read the same and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters believes it to be true.

THOMAS D. McCARTHY.

Sworn to before me this 2nd day of April, 1921.

[SEAL.]

ARTHUR P. LAVERY,
Notary Public, N. Y. Co., 392.

10 [Endorsed:] 10. District Court of the United States, for the Southern District of New York. Jules W. Arndstein, Petitioner, against Thomas D. McCarthy, United States Marshal for the Southern District of New York, Respondent. Return of Marshal McCarthy to writ of habeas corpus granted April 2, 1921, and notice of filing. Saul S. Myers, Attorney for Trustee in bankruptcy,

60 Wall Street, New York. Copy Received May 25, 1921. Jas. W. Osborne. U. S. District Court, S. D. of N. Y. Filed May 25, 1921.

SIR:

Please take notice that the within is a copy return this day duly made, entered and filed in the office of the Clerk of the District Court of the United States, Southern District of New York. Dated, New York, May 25, 1921.

Yours, &c.,

SAUL S. MYERS,
Attorney for Trustee.

Office and Post Office Address: 60 Wall Street, New York City.

To: James W. Osborne, Esq., 100 Broadway, Boro. of Manhattan, City of New York.

11 District Court of the United States for the Southern District of New York.

In the Matter of NICHOLAS ARNSTEIN, Alias J. W. Arnold, Alias James Wilfred Adair, Alias James Wilford Adair, Alias James W. or J. W. Ames, Alias McCormick, Alias Borach, Alias Brice, Alleged Bankrupt.

Petition for Involuntary Bankruptcy.

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

1. Said Nicholas Arnstein for the greater portion of the six months next immediately preceding the date of the filing of this petition has had his principal place for the transaction of business at No. 1 West 83rd Street, and No. 167 West 72nd Street, in the Borough of Manhattan, in the City of New York and has resided in said District, during said period and is neither a wage earner nor a person engaged principally in farming or the tillage of the soil nor is he a municipal, railroad, insurance or banking corporation, but is by occupation an alleged broker.

2. Said alleged bankrupt is insolvent and owes debts to the amount of more than One thousand Dollars.

12 3. Your petitioner is a creditor of the said alleged Bankrupt and has a provable claim against him amounting in the aggregate in excess of securities held by him to the sum of upwards of \$500 and your petitioner is not entitled to priority on his said claim within the meaning of the Bankruptcy Act of 1898, nor has your petitioner received a preference within the meaning of said act.

4. The nature and amount of your petitioner's claim is as follows: Various customers of your petitioner consisting of Members of the New York Stock Exchange, investment houses and banking institu-

tions, have been bonded by your petitioner by what are commonly known as Blanket Bonds. These bonds are intended to insure such persons against loss by theft, etc., by the alleged bankrupt, and your petitioner has, in all instances where demand has been made upon your petitioner, reimbursed such persons for such losses. Such persons thereupon duly assigned, transferred and set over to your petitioner all claim and demand of every nature, kind and description against the persons who stole such property and against any and all persons who have come into possession of such property, which said reimbursement and indebtedness to your petitioner exceeds the sum of \$500.

5. The said Alleged Bankrupt is a notorious criminal with a well-known criminal record, not only in the United States but in
13 England. His assets consist of many thousands of dollars, the proceeds of such stolen property as aforesaid, and his liabilities are in excess of these assets, but the exact amount of such liabilities are at the present time unknown to your petitioner.

6. Within four months next immediately preceding the date of the filing of this petition the said Alleged Bankrupt was and still is insolvent and while so insolvent committed acts of bankruptcy in that within the said period of four months he made payments and transfers of assets, to various persons with intent to defraud his creditors, as follows: He deposited the sum of \$16,000 or caused the same to be deposited with The Pacific Bank of New York City under the name of J. W. Arnold and this sum of \$16,000 was the specific moneys, the proceeds of such stolen property as aforesaid. He likewise transferred large sums of money to one Nick Cohen and to his wife and to others, all with intent to hinder, delay and defraud his creditors, and all within the period of four months as aforesaid.

7. The creditors of the said Alleged Bankrupt are less than twelve in number.

8. Wherefore your petitioner prays that service of this petition with a subpoena may be made upon the said Alleged Bankrupt as provided by the Bankruptcy Act and that he may be adjudged a bankrupt within the purview of the said act.

Dated, February 19th, 1920.

NATIONAL SURETY COMPANY,
By WM. A. THOMPSON, *Vice Pres.*

14 UNITED STATES OF AMERICA,
*Southern District of New York,
City and County of New York, ss:*

William A. Thompson, being duly sworn, deposes and says that he is one of the Vice Presidents of the National Surety Company; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true.

Deponent further says that he makes this verification because pe-

tioner is a domestic corporation and deponent is one of its officers, to wit: a Vice President.

WM. A. THOMPSON.

Sworn to before me this 9th day of February, 1920.

H. E. EMMETT,

Notary Public for Kings Co., No. 12.

U. S. District Court, S. D. of N. Y. Filed Feb. 20, 1920.

15 District Court of the United States for the Southern District of New York.

In the Matter of NICHOLAS ARNSTEIN, Alias J. W. Arnold, Alias James Wilfred Adair, Alias James Wilford Adair, Alias James W. or J. W. Ames, Alias McCormick, Alias Borach, Alias Brice, Alleged Bankrupt.

Petition for Appointment of Receiver.

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

The petition of the National Surety Company respectfully shows:

I. Your petitioner is the petitioning creditor herein and has this day caused a petition to be filed in this Court for the involuntary bankruptcy of the said alleged bankrupt.

II. Your petitioner now applies for the appointment of a Receiver and shows that such appointment is absolutely necessary to protect the creditors of this estate. Your petitioner shows that the National Surety Company has among its customers a large number of stock exchange houses, investment houses, banking institutions and semi-banking institutions. Your petitioner further shows that

16 it has executed a large number of bonds for these customers and that said bonds are commonly known as "Blanket Bonds." Your petitioner further shows that these bonds have been written for very large sums of money and that these customers have recently sustained heavy losses by reason of theft, etc., and that your petition has in various instances been compelled to, and has in fact, paid out to these customers large sums of money to indemnify them against losses sustained by reason of such thefts.

III. Your petitioner further shows that upon paying these losses to such of its customers as hereinbefore referred to, these customers have in turn assigned, transferred and set over to your petitioner all claims of every nature, kind and description which they now have, or ever did have, against the alleged bankrupt and against any and all persons who have received any part of the proceeds of the stolen property.

IV. Your petitioner further shows that on February 18th, 1920, one of the criminal associates of the alleged bankrupt, to wit, Joseph

Gluck, made a confession in the office of the District Attorney of the County of New York admitting that these thefts have aggregated over One Million Dollars (\$1,000,000) and specifically identifying part of the proceeds of the stolen property, to wit, the sum of Sixteen Thousand Dollars (\$16,000) in The Pacific Bank of the City of New York under the name of "J. W. Arnold."

17 V. Your petitioner further shows that it has been informed and believes that considerable more property, or the proceeds thereof, has been transferred to various other criminal associates of the alleged bankrupt, and your petitioner believes, and therefore shows, that it is absolutely and imperatively necessary that this Court forthwith appoint a Receiver to the end that such Receiver may be able to locate such property and hold the same for the benefit of the creditors of this estate.

VI. Your petitioner further shows that it is informed and believes that certain of these criminal associates are about to leave the State of New York and, in fact, are about to leave this Country, and your petitioner therefore shows that it is necessary that a Receiver be appointed and act before the property, or the proceeds thereof, is taken out of the State of New York and later out of this Country.

VII. Your petitioner, therefore, asks for the appointment of a Receiver and that an injunction issue restraining all safe deposit companies, all banks and all trust companies from allowing the alleged bankrupt, or anyone else, from removing or interfering with any property of any kind belonging to the alleged bankrupt, whether the same be in the name of the alleged bankrupt or in the name of any one of the following persons, that is to say:

J. W. Arnold.

James Wilfred Adair.

James Wilford Adair.

McCormick.

Ames.

Nick Cohen.

Nick Cohn.

Borach.

Brice.

Miss or Mrs. Lottie M. Brice.

Miss or Mrs. Borach.

Miss or Mrs. Fanny Arnstein.

18 Miss or Mrs. Arnold.

Fannie or Fanny Brice.

Dated, New York, February 19th, 1920.

NATIONAL SURETY COMPANY,

Petitioner.

By WILLIAM A. THOMPSON,

Vice-President.

SAUL S. MYERS, *Atty. for Petitioner.*

No. 60 Wall Street, Manhattan Boro., New York City.

10 STATE OF NEW YORK,
 City and County of New York, ss.

William A. Thompson, being duly sworn, deposes and says: that he is one of the Vice-Presidents of the National Surety Company, the petitioner named in the foregoing petition; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

The reason this verification is made by deponent and not by the petitioner is that the petitioner is a domestic corporation and deponent is an officer thereof, to wit, Vice President.

WM. A. THOMPSON.

Sworn to before me, this 19th day of February, 1920.

H. E. EMMETT,
Notary Public, Kings County.

U. S. District Court, S. D. of N. Y. Filed Feb. 20, 1920.

20 At a Stated Term of the United States District Court for the
 Southern District of New York Held at the Court Rooms
 Thereof, Post Office Building, Borough of Manhattan, New York
 City, on the 19 Day of February, 1920.

Present: Hon. A. N. Hand, Judge.

In Bankruptcy.

No. —.

In the Matter of NICHOLAS ARNSTEIN, Alias J. W. Arnold, Alias James Wilfred Adair, Alias James Wilford Adair, Alias James W. or J. W. Ames, Alias McCormick, Alias Borach, Alias Brice, Alleged Bankrupt.

Whereas, an involuntary petition in bankruptcy has this day been duly filed in the office of the Clerk of this Court, against the above named alleged bankrupt, and it appearing that a subpœna has duly been issued against said alleged bankrupt, as required by law, and upon reading and filing the annexed petition of the National Surety Co. and a bond of the said petitioning creditor having been duly filed and approved; and it appearing that the granting of this order is necessary to preserve the assets of the above named alleged bankrupt.

Now, it is, on motion of Saul S. Myers, attorney for said petitioning creditor,

Ordered, that Edwards H. Childs, Esq. be and he hereby is appointed temporary receiver of all goods, wares and merchandises, accounts, account books, chattels, choses in action, real estate and

all other property of whatsoever nature and wheresoever located, belonging to or being the property of or in the possession of the above named alleged bankrupt; and it is further

Ordered, that said receiver give a sufficient bond to the people of the United States in the sum of five thousand dollars (\$5,000.), conditioned for the faithful performance of his duties as such receiver; and it is further

Ordered, that said receiver be and he is hereby empowered forthwith to take possession of all property of whatsoever nature and wheresoever located, now owned by or in the possession of said alleged bankrupt, and all and any property wheresoever located and of whatsoever nature, being the property of said alleged bankrupt and in the possession of any agent, servant, officer, or representative of said alleged bankrupt, and said receiver is authorized to do all and any such acts and take all and any such proceedings as may enable him forthwith to obtain possession of all and any such property; and it is further

Ordered, that all persons, firms and corporations, including said alleged bankrupt, and all attorneys, agents, officers and servants of said alleged bankrupt forthwith deliver to said receiver all property of whatsoever nature and wheresoever located, including merchandise, accounts, notes and bills receivable, drafts, checks, moneys, securities, and all other choses in action, account books, records, chattels, lands

and buildings, life and fire and all other insurance policies
21 in the possession of them, or any of them, and owned by the alleged bankrupt, and said alleged bankrupt is ordered forthwith to deliver to said receiver all and any such property now in the possession of the said alleged bankrupt; and it is further

Ordered, that all persons, firms and corporations including all creditors of said alleged bankrupt, and the representatives, agents, attorneys and servants of all such creditors, and all sheriffs, marshals and other officers, and their deputies, representatives and servants, are hereby enjoined and restrained from removing, transferring, disposing of or attempting in any way to remove, transfer or dispose of or in any way interfere with any property, assets or effects in the possession of the said alleged bankrupt, or owned by said alleged bankrupt and in the possession of any officers, agents, attorneys or representatives of said alleged bankrupt, and all said persons are further enjoined from executing or issuing or causing the execution or issuance or the suing out of any Court, of any writ, process, summons, attachment, replevin, or any other proceeding for the purpose of impounding or taking possession of or interference with any property owned by or in the possession of said alleged bankrupt, or owned by said alleged bankrupt and in the possession of any agents, servants, or attorneys of said alleged bankrupt; and it is further

Ordered, that all persons, firms and corporations be and they hereby are enjoined from disturbing or interfering with gas, telephone service, heat, electrical service, water supply or any other utility of like kind, furnished to said alleged bankrupt, and are hereby enjoined from cutting off or discontinuing the furnishing of any such utilities to said alleged bankrupt except upon three days'

notice in writing to said receiver, and all persons, firms or corporations owning real or personal property, including any lands or buildings in which is located any property of said alleged bankrupt, are enjoined pending the further order of this Court, from removing or interfering with any property of said alleged bankrupt.

Ordered that every safe deposit company, bank or trust company and all other persons and corporations upon whom this order shall be served by mail or otherwise or to whose attention this order shall be called, and their representatives, agents, attorneys and servants be and they are hereby enjoined, and restrained from removing, transferring, disposing of or attempting in any way to remove, transfer or dispose of, or in any way interfere with or allow interference with any money, stocks, bonds, or other property of the Alleged Bankrupt herein, whether in his own name or the name of any one of the following persons: J. W. Arnold, James Wilfred Adair, James Wilford Adair, McCormick, Ames, Nich Cohen, Nich Cohn, Borach, Brice, Miss or Mrs. Lottie M. Brice, Miss or Mrs. Borach, Miss or Mrs. Fanny Arnstein, Miss or Mrs. Arnold, Fannie or Fanny Brice.

AUGUSTUS N. HAND,
D. J.

The attention of receivers is especially directed to instructions to receivers Nos. 2, 3 and 4.

[Endorsed:] United States District Court, Southern District of New York. In the Matter of Nicholas Arnstein, Alleged Bankrupt. Order Appointing Receiver and Restraining Order. Saul S. Myers, Attorney for Petitioner, 60 Wall Street, Borough of Manhattan, New York City. U. S. District Court, S. D. of N. Y. Filed Feb. 20, 1920.

22 District Court of the United States for the Southern District of New York.

In the Matter of NICHOLAS ARNSTEIN, Alleged Bankrupt.

Petition for Examination of Witnesses, Section 21 (A) of the National Bankrupt Act.

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

The petition of Edwards H. Childs respectfully shows:

First. On February 19, 1920, a petition was duly filed in this Court for the involuntary bankruptcy of the said Nicholas Arnstein. Such proceedings were thereafter had herein that on the same day your petitioner was duly appointed receiver herein and on the following day your petitioner duly qualified and immediately entered upon the discharge of his duties as such receiver, and has ever since been acting in that capacity.

Second. Your petitioner further shows that the order appointing him receiver contained the following provision, to wit: "Ordered that every safe deposit company, bank or trust company and all other persons and corporations upon whom this order shall be served by mail or otherwise or to whose attention this order shall be called, and their representatives, agents, attorneys and servants be and they are hereby enjoined and restrained from removing, transferring, disposing of or attempting in any way to remove, transfer or dispose of, or in any way interfere with or allow interference with any money,

23 stocks, bonds, or other property of the alleged bankrupt herein, whether in his own name or the name of anyone of the following persons: J. W. Arnold, James Wilfred Adair, James Wilford Adair, McCormick, Ames, Nick Cohen, Nick Cohn, Borach, Brice, Miss or Mrs. Lottie M. Brice, Miss or Mrs. Borach, Miss or Mrs. Fanny Arnstein, Miss or Mrs. Arnold, Fannie or Fanny Brice."

3. Your petitioner further shows that he has been informed by Saul S. Myers, Esq., his counsel herein, and verily believes it to be true, that a copy of the order appointing your petitioner receiver as aforesaid was duly served upon each and every safe deposit company, bank and trust company in the Borough of Manhattan and in the Borough of the Bronx on February 19, 1920.

4. Your petitioner further shows that on Saturday, February 21, 1920, he was informed by Moses H. Grossman, Esq., in the office of Saul S. Myers, Esq., that he, the said Moses H. Grossman, has been retained as counsel for one, Fannie Brice, and that the said Fannie Brice is the wife of the alleged bankrupt herein.

5. Your petitioner further shows that he has been informed and believes that the alleged bankrupt herein has moneys or securities deposited in the following institutions, that is to say:

The Colonial Bank,
The United States Mortgage and Trust Company,
The Madison Safe Deposit Company,
The Equitable Trust Company and
The Pacific Bank.

Your petitioner is further informed that in some instances the said moneys and securities stand in the name of the wife of the said alleged bankrupt, namely, the said Fannie Brice.

24 Your petitioner further shows that he is informed and believes that the Excelsior Savings Bank has an account under the name of Fannie M. Arnold and that the alleged bankrupt in this proceeding has at times been known under the name of J. W. Arnold.

Your petitioner further shows that he has been informed and believes that the Greenwich Savings Bank has an account under the name of Fannie Arnold.

Your petitioner further shows that the Central Mercantile Bank of New York has an account under the name of Nicholas J. McCormick; that the alleged bankrupt has at times been known under the name of Nicholas J. McCormick.

Your petitioner further shows that the sources of his information and the grounds of his belief in respect to the statements made in this paragraph of the petition are conversations had with said Saul S. Myers, one of his counsel herein, and letters received by your petitioner's said counsel from certain of the above named institutions which letters have been submitted to and read by your petitioner.

6. Your petitioner further shows that he has been informed and believes that one, Joseph Gluck, is now in the Tombs prison, in the City of New York, awaiting trial under an indictment charging him with having stolen large sums of money and securities from various stock exchange houses in the City of New York. And your petitioner has been informed and believes that the said Gluck has made a confession to the District Attorney of the County of New

York to the effect that he and the alleged bankrupt herein
25 were acting together and that large sums of money were stolen by the said Gluck and by the said alleged bankrupt and by other confederates, and that portions thereof have been secreted.

7. Your petitioner therefore prays for an order for the examination of all of the above named persons and institutions under Section 21 (A) of the National Bankrupt Act for the purpose of discovering assets belonging to the estate herein.

EDWARDS H. CHILDS.

Receiver.

Dated New York, February 24, 1920.

STATE OF NEW YORK,

City & County of New York, ss:

Edwards H. Childs, being duly sworn deposes and says; That he is the petitioner named in the foregoing petition. That he has read the same and knows the contents thereof; that the same is true of his own knowledge, except as to the matter therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

EDWARDS H. CHILDS.

Sworn to before me this 24th day of February 1920.

CHARLES STUMPF,

Notary Public, N. Y. County.

Filed, U. S. Dist. Court, S. D. of N. Y. Feb. 25, 1920.

26

Order to Examine Witnesses.

At a Stated Term of the District Court of the United States for the Southern District of New York Held at the Post Office Building, in the Borough of Manhattan, in the City of New York, February 25, 1920.

Present: Hon. A. N. Hand, District Judge.

In the Matter of NICHOLAS ARNSTEIN, Alleged Bankrupt.

Order for Examination of Witnesses under Section 21-A of the National Bankruptcy Act.

On reading and filing the annexed petition of the Receiver herein, verified February 24, 1920, and on motion of Saul S. Myers, one of the counsel to the said Receiver, it is hereby

Ordered that Alexander Gilchrist, Esq., be and he hereby is appointed Special Commissioner herein for the purpose of taking the examination under Section 21-A of the Bankruptcy Act, of the following witnesses, to wit:

Fannie Brice,

Nicholas Arnstein,

Joseph Gluck,

Irving Gluck,

The Colonial Bank,

The United States Mortgage and Trust Company,

27 The Madison Safe Deposit Company,

The Equitable Trust Company, and

The Pacific Bank.

And it is further ordered that the said Commissioner may issue subpoenas for such and other witnesses.

AUGUSTUS N. HAND.

U. S. D. J.

28

Petition to Examine Witnesses.

District Court of the United States for the Southern District of New York.

In the Matter of NICHOLAS ARNSTEIN, Alleged Bankrupt.

Petition for Examination of Witnesses, Section 21 (A) of the National Bankruptcy Act.

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

The petition of Edwards H. Childs respectfully shows:

First. On February 19, 1920, a petition was duly filed in this Court for the involuntary bankruptcy of the said Nicholas Arnstein. Such proceedings were thereafter had herein that on the same day

your petitioner was duly appointed receiver herein and on the following day your petitioner duly qualified and immediately entered upon the discharge of his duties as such receiver, and has ever since been acting in that capacity.

Second. Your petitioner further shows that the order appointing him receiver contained the following provision, to wit: "Ordered that every safe deposit company, bank or trust company and all other persons and corporations upon whom this order shall be served by mail or otherwise or to whose attention this order shall be called, and their representatives, agents, attorneys and servants be and they are hereby enjoined and restrained from removing, transferring, disposing of or attempting in any way to remove, transfer or dispose of, or in any way interfere with or allow interference with any money, stocks, bonds, or other property of the Alleged Bankrupt herein, whether in his own name or the name of any one of the following persons: J. W. Arnold, James Wilfred Adair, James Wilford Adair, McCormick, Ames, Nick Cohen, Nick Cohn, Borach, Brice, Miss or Mrs. Lottie M. Brice, Miss or Mrs. Borach, Miss or Mrs. Fanny Arnstein, Miss or Mrs. Arnold, Fannie or Fanny Brice."

3. Your petitioner further shows that he has been informed by Saul S. Myers, Esq., his counsel herein, and verily believes it to be true, that a copy of the order appointing your petitioner receiver as aforesaid was duly served upon each and every safe deposit company, bank and trust company in the Borough of Manhattan and in the Borough of the Bronx on February 19, 1920.

4. Your petitioner further shows that on Saturday, February 21, 1920, he was informed by Moses H. Grossman, Esq., in the office of Saul S. Myers, Esq., that he, the said Moses H. Grossman, has been retained as counsel for one, Fannie Brice, and that the said Fannie Brice, is the wife of the alleged bankrupt herein.

5. Your petitioner further shows that he has been informed and believes that the alleged bankrupt herein has moneys or securities deposited in the following institutions, that is to say:

30 The Colonial Bank,
The United States Mortgage and Trust Company,
The Madison Safe Deposit Company,
The Equitable Trust Company, and
The Pacific Bank.

Your petitioner is further informed that in some instances the said moneys and securities stand in the name of the wife of the said alleged bankrupt, namely, the said Fannie Brice.

Your petitioner further shows that he is informed and believes that the Excelsior Savings Bank has an account under the name of Fannie M. Arnold and that the alleged bankrupt in this proceeding has at times been known under the name of J. W. Arnold.

Your petitioner further shows that he has been informed and believes that the Greenwich Savings Bank has an account under the name of Fannie Arnold.

Your petitioner further shows that the Central Mercantile Bank of New York has an account under the name of Nicholas J. McCormick; that the alleged bankrupt has at times been known under the name of Nicholas J. McCormick.

Your petitioner further shows that the sources of his information and the grounds of his belief in respect to the statements made in this paragraph of the petition are conversations had with said Saul S. Myers, one of his counsel herein, and letters received by your petitioner's said counsel from certain of the above named institutions, which letters have been submitted to and read by your petitioner.

6. Your petitioner further shows that he has been informed and believes that one, Joseph Gluck, is now in the Tombs prison, in the City of New York, awaiting trial under an indictment charging him with having stolen large sums of money and securities from various stock exchange houses in the City of New York. And your petitioner has been informed and believes that the said Gluck has made a confession to the District Attorney of the County of New York to the effect that he and the alleged bankrupt herein were acting together and that large sums of money were stolen by the said Gluck and by the said alleged bankrupt and by other confederates, and that portions thereof have been secreted.

7. Your petitioner therefore prays for an order for the examination of all of the above named persons and institutions under Section 21 (A) of the National Bankruptcy Act for the purpose of discovering assets belonging to the estate herein.

Dated, New York, February 24, 1920.

EDWARDS H. CHILDS,
Receiver.

32 STATE OF NEW YORK,
City and County of New York, ss:

Edwards H. Childs, being duly sworn, deposes and says: That he is the petitioner named in the foregoing petition. That he has read the same and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

EDWARDS H. CHILDS.

Sworn to before me this 24th day of February, 1920.

CHARLES STUMPF,
Notary Public, Nassau County.

Certificate filed in N. Y. C. No. 594.
New York Register's No. 10459.

U. S. District Court, S. D. of N. Y. Filed Feb. 25, 1920.

- 33 At a Stated Term of the District Court of the United States for the Southern District of New York Held at the Post Office Building, in the Borough of Manhattan, City of New York, on the 1st Day of April, 1920.

Present: Hon. Learned Hand, District Judge.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Order for Examination of Witnesses under Sect. 21-A.

On reading and filing the annexed petition of Henry A. Gildersleeve, the Trustee in Bankruptcy herein, verified April 1st, 1920, and on motion of Saul S. Myers, Trustee's attorney herein, it is hereby

Ordered that Alexander Gilchrist, Jr., Esq., be and he hereby is appointed Special Commissioner herein for the purpose of taking the examination, under Sect. 21-A of the National Bankruptcy Act, of the following witnesses, to wit:

1. Nicholas Cohen, alias Harry Davis, alias "Big Nick," alias Mack.

2. Phil Kastel or Castel.

3. Edward Winkler, alias Weiss.

4. Charles Druckker, alias Pluck.

5. Samuel Ginsberg.

34 6. Cheeks Ginsberg.

7. Roughy Ginsberg.

8. Paddy Goldberg.

9. Louis Bleet.

10. W. W. Easterday.

11. David F. Browder.

12. David W. Sullivan.

13. Norman S. Bowles.

14. Randolph Newman.

15. Frederick Gondorf.

16. Charles Gondorf.

17. John Rogers.

18. S. Charles Sugarman.

19. Joseph H. Sugarman.

And it is further ordered that the Clerk of this Court be and he hereby is directed to issue subpoenas for such witnesses.

Enter:

LEARNED HAND,
U. S. D. J.

35 United States District Court, Southern District of New York.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Petition for Examination of Witnesses under Sect. 21-A.

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

The petition of Henry A. Gildersleeve respectfully shows:

I. Your petitioner is the Trustee in Bankruptcy herein, having been duly elected at a first meeting of creditors held before Seaman Miller, Esq., on March 24th, 1920.

II. Your petitioner desires to have the witnesses referred to in the annexed order examined under Sect. 21-A and in order to preserve the orderly procedure in this proceeding your petitioner prays that such examination be continued before Commissioner Gilchrist.

III. The important creditors in this proceeding are: the American Surety Company, National Surety Company, U. S. Fidelity and Guarantee Company and various other surety companies, all represented in this proceeding by Saul S. Myers, Esq., No. 60 Wall Street, New York City, whom your petitioner has also asked to represent your petitioner as trustee.

IV. The examination of these witnesses is absolutely necessary for these reasons: The bankrupt has been away from the City of New York since the filing of the petition in bankruptcy herein, and his whereabouts are, as your petitioner has been informed by the Police Department and by the District Attorney's office of the County of New York, unknown.

The bankrupt's wife and the bankrupt's attorneys, Fallon & McGee, Esqs., have testified that they do not know the whereabouts of the bankrupt.

Your petitioner believes that certain of the witnesses whose examination is sought know the whereabouts of the bankrupt and that other of such witnesses know where assets have been secreted belonging to the bankrupt.

V. Wherefore your petitioner prays for the annexed order, for which no previous application has been made.

Dated, New York, April 1st, 1920.

HENRY A. GILDERSLEEVE,
By SAUL S. MYERS,
Attorney for Trustee.

37 STATE OF NEW YORK,
 City and County of New York, ss:

Saul S. Myers, being duly sworn deposes and says: That he is attorney for the Trustee in Bankruptcy herein; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true; that the reason this verification is made by deponent and not by the Trustee is that deponent is the Trustee's attorney herein and is familiar with all the facts.

SAUL S. MYERS.

Sworn to before me this 1st day of April, 1920.

JOS. K. GUERIN,
Commr. of Deeds.

N. Y. County Clerk's No. 97.

U. S. District Court S. D. of N. Y. Filed Apr. 1, 1920.

38 United States District Court, Southern District of New York.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Affidavit in Lieu of Schedules.

STATE OF NEW YORK,
 City of New York,
 County of New York, ss:

Saul S. Myers, being sworn, deposes and says:

(1) I am the attorney for the petitioning creditor herein. I am filing this affidavit so that a first meeting of creditors can be called at the earliest possible time. No schedules have been filed and the bankrupt is not now within the jurisdiction of the court and has not been within the jurisdiction of the court at any time since the filing of the petition in bankruptcy herein.

(2) The creditors so far as I have been informed are as follows:

Name.	Amount.
American Surety Company.....	Unknown.
National Surety Company.....	"
U. S. Fidelity & Guaranty Co.....	"
Fidelity & Deposit Co. of Md.....	"
Royal Insurance Company.....	"

SAUL S. MYERS.

Sworn to before me this 11th day of March, 1920.

JOSEPH K. GUERIN.

38-a

1281.

Statement of All Debts of Bankrupt.

SCHEDULE A (1), No. —.

Statement of All Creditors Who Are to be Paid in Full or to Whom Priority is Secured by Law.

Claims Which Have Priority.

	Amount.	
	Dollars.	Cents.
1. Taxes and debts due and owing the United States	00	00
2. Taxes due and owing to the State of — or to any County, District or Municipality thereof	00	00
3. Wages due workmen, clerks or servants, to an amount not exceeding \$300 each, earned within three months before filing the petition	00	00
4. Other Debts having priority by law.....	00	00
Total	00	00

JULES ARNDSTEIN,
Petitioner.

This Schedule must be executed in triplicate.

39

1282.

SCHEDULE A (2), No. —.

Creditors Holding Securities.

(N. B.—Particulars of Securities held, with dates of same, and when they were given, to be stated under the names of the several Creditors, and also particulars concerning each Debt, as required by the Acts of Congress relating to Bankruptcy, whether contracted as partner or joint-contractor with any other person; and if so, with whom.)

	Value of securities.		Amount of debts.	
	Dollars.	Cents.	Dollars.	Cents.
None	00	00	00	00
Total	00	00	00	00

JULES ARNDSTEIN,
Petitioner.

SCHEDULE A (3), No. —.

Creditors Whose Claims Are Unsecured.

N. B.—When the name and residence (or either) of any drawer, Maker, Endorser or Holder of any Bill, or Note, etc., are unknown, the facts must be stated; and also the name and residence of the last Holder known to the Debtor. The debt due to each Creditor must be stated in full and any claim by way of Set-off stated in the Schedule of Property.)

	Amount	
	Dollars.	Cents
Fanny Arnstein 1 West 83rd St. Feb. 11, 1920, Borrowed	9,000.	00
Fanny Arnstein 1 West 83rd St. Feb. 15, 1920, Money advanced in payment of obligation	5,000.	00
Fanny Arnstein 1 West 83rd St. Feb. 9, 1920, borrowed	500.	00
Total	\$14,500.	00

JULES ARNDSTEIN,
Petitioner.

Insert in all cases, ledger page, names of creditors and their residence if known or unknown, so state, when and where debt was contracted; nature and consideration of the Debt, and whether any Judgment, Bond, Bill of Exchange, Promissory Note, Etc., and whether contracted as partner or joint contractor or with any other person; and if so, with whom.

This Schedule must be executed in triplicate.

SCHEDULE A (4), No. —.

Liabilities on Notes or Bills Discounted Which Ought to Be Paid by the Drawers, Makers, Acceptors, or Endorsers.

(N. B.—The dates of the Notes or Bills, and when due, with the Names, Residences, and the Business or Occupation of the Drawers, Makers or Acceptors thereof are to be set forth under the Names of the holders. If the Names of the Holders are not known, the Name of the last Holder known to the Debtor shall be stated and his business and place of residence. The same particulars as to Notes or Bills on which the Debtor is liable as Endorser.)

		Amount.	
		Dollars.	Cents.
None		None.	
Total		00	00

JULES ARNDSTEIN,
Petitioner.

42

1285.

SCHEDULE A (5), No. —.

Accommodation Paper.

(N. B.—The dates of the Notes or Bills, and when due, with the Names and Residences, of the Drawers, Makers and Acceptors thereof; are to be set forth under the Names of the holders; if the bankrupt be liable as Drawer, Maker, Acceptor or Endorser thereof, it is to be stated accordingly. If the names of the Holders are not known, the Name of the last Holder known to the Debtor should be stated, with his residence. The same particulars as to other commercial paper.)

		Amount.	
		Dollars.	Cents.
None		None.	
Total			

JULES ARNDSTEIN,
Petitioner.

Insert in all cases, ledger page, names of holders, residence if known, if unknown, so state; names of and residence of persons accommodated; place where contracted; whether liability was contracted as partner or joint contractor, or with any other person, and if so, with whom.

This Schedule must be executed in triplicate.

43

1286.

Oath to Schedule A.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 10th day of June, A. D. 1920, before me personally came Jules Arndstein, the person mentioned in and subscribed to the foregoing Schedule, who, being by me first duly sworn, did declare the said Schedule to be a statement of all his debts, in accordance with the acts of Congress relating to Bankruptcy.

Subscribed and sworn to before me this 10th day of June, A. D. 1920.

ALEX GILCHRIST,
Notary Public, Rockland, N. Y. Co.
(Official Character.)

44

1287.

SCHEDULE B (1), No. —.

Statement of All Property of Bankrupt.

Real Estate.

	Estimated value.	
	Dollars.	Cents.
None	00	00
Total	00	00

JULES ARNDSTEIN,

Petitioner.

45

1288.

SCHEDULE B (2), No. —.

Personal Property.

	Amount.	
	Dollars.	Cents.
A. Cash on hand	None.	
B. Bills of exchange. Promissory notes or securities of any description (each to be set out separately)	None.	
C. Stock in trade in business of — at —, of the value of .....	..	..
D. Household goods and furniture, household stores, wearing apparel, and ornaments of the person, viz: wearing apparel nominal .....	..	..
E. Books, prints and pictures, viz:	None.	
F. Horses, cows, sheep and other animals with number of each, viz:	None.	
G. Carriages and other vehicles, viz:	None.	
H. Farming stock and implements of husbandry, viz:	None.	
I. Shipping and shares in vessels, viz:	None.	
K. Machinery fixtures, apparatus and tools, used in business, with the place where each is situated, viz:	None.	
L. Patents copyright and trade marks, viz:	None.	
M. Goods or personal property of any other description with the place where each is situated, viz:	None.	
Total .....	..	..

JULES ARNDSTEIN, *Petitioner.*

46 1290.

SCHEDULE B (3).

Choses in Action.

Description and amount.	Amount.	
	Dollars.	Cents.
A. Debts due Petitioner on open account	None.	00 00
Total .....		.. ..

JULES ARDNSTEIN,
Petitioner.

47 1290 B.

SCHEDULE B (3)—Continued.

Choses in Action.

Description and amount.	Dollars.		Cents.
B. Stock in incorporated Companies, Interest in Joint Stock Companies, and Negotiable Bonds.....		None.	
C. Policies of Insurance.....		None.	
D. Unliquidated Claims of every nature, with their estimated value.....		None.	
E. Deposits of money in banking institution and else- where: Pacific Bank, 49th St. Branch.....		18,000.	00
Total		18,000.	00

JULES ARDNSTEIN,
Petitioner.

48 1291.

SCHEDULE B (4), No. —.

*Property in Reversion, Remainder, or Expectancy, Including Prop-
erty Held in Trust for the Debtor or Subject to Any Power or
Right to Dispose of or to Charge.*

N. B.—A particular description of each interest must be entered.
If all or any of the Debtor's Property has been conveyed by Deed or
Assignment, or otherwise, for the benefit of Creditors, the date of such
Deed Should be stated, the name and address of the person to whom
the property was conveyed, the amount realized from the proceeds
thereof, and the disposal of the same, as far as known to the Debtor.

General interest.	Particular description.	Supposed value of my interest.	
		Dollars.	Cents.
Interest in Land.....		None.	
Personal Property.....		None.	
Property in Money, Stocks, Shares, Bonds, Annuities, etc.		None.	
Rights and Powers, Legacies and Bequests.....		None.	
Total		00	00

Property Heretofore Conveyed for Benefit of Creditors.

	Amount realized from proceeds of property conveyed.	
	Dollars.	Cents.
What portion of Debtor's property has been conveyed by Deed or Assignment, or otherwise for benefit of Creditors; date of such Deed, name and address of party to whom conveyed, amount realized therefrom and disposal of same, so far as known to the Debtor.....	None.	
What sum or sums have been paid to Counsel, and to whom, for service rendered or to be rendered in this Bankruptcy	None.	
Total	00	00

JULES ARNDSTEIN,
Petitioner.

49

1292.

SCHEDULE B (5), No.—.

A Particular Statement of the Property Claimed as Exempted from the Operation of the Acts of Congress Relating to Bankruptcy, Giving Each Item of Property and Its Valuation; and if Any Portion of It Is Real Estate, Its Location, Description, and Present Use.

	Valuation.	
	Dollars.	Cents.
Military Uniforms, Arms and Equipments.....	None.	00 00
Property claimed to be exempted by State laws; its valuation; whether real or personal; its descriptions and present use; and reference given to the Statute of the State creating the exemption.....	..	..
Total	00	00

JULES ARNDSTEIN,
Petitioner.

50

1293.

SCHEDULE B (6), No. —.

Books, Papers, Deeds, and Writings Relating to Bankrupt's Business and Estate.

The following is a true list of all Books, Papers, Deeds and Writings relating to my Trade, Business, Dealings, Estate and Effects, or any part thereof which at the date of this Petition, are in my possession or under my custody and control, or which are in the Possession or Custody of any Person in Trust for me for my Use, Benefit, or Advantage; and also of all others which may have been heretofore, at any time in my Possession, or under my custody or Control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same:

Books	None.
Deeds	None.
Papers, etc.....	None.

JULES ARNDSTEIN,
Petitioner.

51

1294.

Oath to Schedule B.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 10th day of June, A. D. 1920, before me personally came Jules Arndstein, the person mentioned in and subscribed to the foregoing Schedule, and who, being by me first duly sworn, did declare the said Schedule to be a statement of all his estate, both real and personal in accordance with the acts of Congress relating to Bankruptcy.

Subscribed and sworn to before me this 10th day of June, A. D. 1920.

ALEX GILCHRIST,
Notary Public, Rockland, N. Y. Co.
(Official Character.)

*Summary of Debts and Assets from the Statements of the Bankrupt
in Schedules A and B.*

Schedule A.	1 (1).	Taxes and Debts due United States	None.
"	"	1 (2).	Taxes due States, Counties, Dis-
		tricts & Municipalities.....	No—.
"	"	1 (3).	Wages
"	"	1 (4).	Other Debts preferred by Law...
"	"	2.	Secured Claims
"	"	3.	Unsecured Claims
"	"	4.	Notes and Bills which ought to be
		paid by other parties thereto.....	\$14,500
"	"	5.	Accommodation Paper

Schedule A total.....	<u>\$14,500</u>
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Schedule B.	1.	Real Estate	
"	"	2a. Cash on hand	
"	"	2b. Bills, Promissory Notes and Securities	
"	"	2c. Stock in Trade	
"	"	2d. Household Goods, &c.	
"	"	2e. Books, Prints and Pictures	
"	"	2f. Horses, Cows and other Animals..	
"	"	2g. Carriages and other Vehicles	
"	"	2h. Farming Stock and Implements..	
"	"	2i. Shipping and Shares in Vessels...	
"	"	2k. Machinery, Tools, &c.	
"	"	2l. Patents, Copyrights and Trade- marks	None.
"	"	2m. Other Personal Property	
"	"	3a. Debts due on Open Accounts	
"	"	3b. Stocks, Negotiable Bonds, &c.	
"	"	3c. Policies of Insurance	
"	"	3d. Unliquidated Claims	
"	"	3e. Deposits of Money in banks and elsewhere	\$18,000.00
"	"	4. Property in Reversion, Remainder, Trust, &c. ....	.....
"	"	5. Property claimed to be exempt
"	"	6. Books, Deeds and Papers

Schedule B total.....	<u>\$18,000.00</u>
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Petitioner.

ter of Petition and Schedules. Fallon & McGee, Attorney for Petitioner. U. S. District Court. Filed June 10, 1920 3.55 p. m. S. D. of N. Y.

54 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Bankruptcy. No. 27525.

JULES ARNDSTEIN, Respondent,

vs.

THOMAS D. MCCARTHY, U. S. Marshal S. D. of N. Y.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of part one of the record of the said District Court in the above entitled matter as agreed on by the parties.

In testimony hereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this fourth day of April, in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the said United States the one hundred and forty-sixth.

[Seal of District Court of the United States, Southern District of N. Y.]

ALEX GILCHRIST, JR.,
Clerk.

55 In the Matter of NICHOLAS ARNSTEIN.

New York, May 15th, 1920—(2.45 p. m.).

Present:

Commissioner Gilchrist.

Mr. Myers.

Mr. Fallon (appeared during the course of the examination).

JULES ARNDTSTEIN, being first duly sworn by Commissioner Gilchrist, testified as follows:

Examined by Mr. Myers:

Q. What is your full name?

A. Jules Arndtstein.

Q. How do you spell that?

A. J-u-l-e-s.

Q. The last name?

A. A-r-n-d-t-s-t-e-i-n.

Q. Have you been known by any other names?

A. Yes sir.

55½ Q. What other names?

A. I am very sorry, gentlemen, I cannot answer; my counsel is not here at the present time.

Mr. Myers: I thought that was your counsel. I do not want to ask you any questions until he comes.

(The examination was suspended.)

(Upon Mr. Fallon's appearing a few minutes later, the examination was resumed as follows):

(The testimony was read to Mr. Fallon.)

Mr. Fallon: We refuse to answer anything about any other names, for the reason that it will tend to degrade or incriminate. We assert our Constitutional prerogative not to answer, being under a criminal charge of Grand Larceny at this time, upon which this question would have some effect.

Mr. Myers: This man is not under any indictment in this Court, and it is immaterial whether he is under indictment in some other Court; but we are not going to ask anything about the commission of any crime of Grand Larceny, burglary or anything else that he may have committed. Our inquiry here is limited to the discovery of assets, and we want to know in how many different names
56 he has deposited the securities which we claim he has.

The Commissioner: It is the privilege of a witness to decline to answer any question that, in his judgment, will tend to incriminate or degrade him. That is, if the answer to any question will tend to incriminate or degrade him, he can decline to answer, stating the ground. That is a purely personal privilege of the witness; not his counsel. Now, ask a question, Mr. Myers.

Mr. Fallon: I ask your Honor to advise the witness in what form he may take that objection: That it is his personal prerogative—

The Commissioner (interrupting): I have so stated: That any question that is asked, the answer to which will tend to incriminate or degrade you, you can decline to answer upon that ground, stating the ground. Do you understand, Mr. Arndstein, the instructions? Any question which is asked you, the answer thereto which in your judgment will tend to incriminate or degrade you, you can decline to answer, stating that you decline to answer upon the ground that it will either tend to incriminate or degrade you.

The Witness: Yes sir.

57 The Commissioner: Now proceed, Mr. Myers.

Q. Do you say that the answer to that question may tend to incriminate or degrade you?

A. Yes sir.

Q. In what respect?

Mr. Fallon: Oh no.

The Commissioner: No. State which it is.

Q. You say that the answer to that question may tend to degrade you?

Mr. Fallon: He said that before.

Q. Or incriminate you; which?

A. Incriminate.

Q. Is it because you are under indictment for Grand Larceny?

The Commissioner: No; no reason for it at all; let it stop there; don't go any further. He has stated his reason why he has declined to answer: On the ground it will tend to incriminate him.

Mr. Myers: That is not sufficient.

Mr. Fallon: What is?

Mr. Myers: A witness cannot say in this Court, in answer to every question, that he refuses to answer because it may incriminate him. He has got to show a possibility of its having some relevancy to some indictment.

The Commissioner: Absolutely not. He may have committed a crime and not been indicted.

Mr. Myers: He has got to show the possibility of that crime.

The Commissioner: No. Next question, Mr. Myers.

Mr. Myers: We want to have it argued out before the Judge.

The Commissioner: You can afterwards; not now. Next question.

Q. Where do you live?

A. 1 West 83rd Street.

Q. Where else?

A. That is all.

Q. How?

A. And the Tombs at the present time.

Q. Where else? Have you any other places of residence?

A. No sir.

Q. Don't you live at Huntington?

A. Well, not yet. We do in the Summer.

Q. Haven't you been there since last Summer?

A. No—well, I made a trip down there, yes.

Q. When?

A. I cannot say exactly. Some time during the Winter.

Q. Was it February?

A. I do not know.

Q. What is your best recollection?

Mr. Myers: Is this counsel going to be allowed to tell this man what to answer?

The Commissioner: No.

Mr. Myers: Then I ask that he be excluded from the Court Room.

The Commissioner: No. He is entitled to be here present. Mr. Fallon, you must not interfere with the witness.

Mr. Fallon: I do not, your Honor; but my friend asked the man a question——

The Commissioner (interrupting): Proceed, Mr. Myers.

Q. Were you there in February?

A. I could not say.

Q. What is your best recollection?

A. It was some time during the Winter.

Q. What is your best recollection as to the month?

A. I have no recollection of it at all.

Q. You must have some recollection.

A. There was no reason for my remembering it, and I do not know.

Q. Well, there is a reason for us to know it. After Christmas or before Christmas?

A. I think it was before.

Q. Where have you been since February 12th last?

A. On the road.

Q. Where? Just say where you went first, and where else
60 you went, from place to place.

Mr. Myers: I want to call your Honor's attention to the fact that Mr. Fallon has again told the witness what to say.

Mr. Fallon: I can tell him to claim his privilege.

The Commissioner: No; that is absolutely a personal privilege of the witness, Mr. Fallon.

Mr. Myers: He has told him again, your Honor. I ask that he be punished for contempt of Court as having again interfered with this inquiry. I ask that something be done here.

The Commissioner: Mr. Fallon, you have no right to coach the witness at all.

Mr. Fallon: I do not want to coach him; I simply——

Mr. Myers (interrupting): I ask that he be directed to sit away from him.

Mr. Fallon: The man is entitled to personal counsel. While it is his personal privilege, he is entitled to his personal counsel, not in the form of objection to the Court, but in an advisory capacity, to tell him when to urge the objection.

The Commissioner: No.

Mr. Fallon: In that way, we urge that we have the right
61 to tell him when he shall claim his Constitutional prerogative.

The Commissioner: No. You can advise him generally, Mr. Fallon. But you are not going to advise him on every question. No.

Mr. Myers: Cannot the witness sit over here?

The Commissioner: If there is any objection, Mr. Fallon, you can object to the question. But upon the question of privilege, you must let the witness urge the objection.

Mr. Myers: Could not the witness be directed to sit over here, your Honor?

The Commissioner: Just ask another question and see how far you get.

Q. Will you state to the Court where you went first, just before Lincoln's Birthday of this year?

A. I am very sorry gentlemen; I must decline to answer, on the ground it may incriminate me; I cannot tell you at this time.

The Commissioner: That is sufficient.

Q. Were you in New York today; this morning?

A. I was here to get to the Court.

Q. What time did you get here?

62 A. To the Court, about half past nine I think.

Q. Did you go to any bank or trust company this morning?

A. No sir.

Q. Where did you come from?

A. For the same reasons, I cannot say at this time.

Q. What are the reasons?

A. It may incriminate me.

Q. Where did you go to when you got to New York?

A. I went to the Court.

Q. Direct to the Court?

A. As quick as possible.

Q. Where did you go first when you got in New York State? Where did you go first?

A. Well, I cannot answer that, for the same reason: It might incriminate me.

Q. Did you go to 1 West 83rd Street?

A. No sir.

Q. Did you go to Mr. Fallon's office?

A. No sir.

Q. Well, where did you go?

A. I cannot say, on the ground that it may incriminate me.

Q. You say whatever you did in New York today, before you went to court, may incriminate you?

A. Yes sir.

Q. Will you say where you were yesterday?

A. No sir, I cannot, for the same reasons.

Q. Have you any brothers?

A. Yes sir.

Q. What are their names?

A. One is Louis.

63 Q. Yes?

A. The other one is Jack.

Q. Where does Jack live?

A. I do not know.

Q. When did you see him last?

A. About eight years.

Q. What is his business?

A. He was at that time a manufacturer and seller of furniture.

Q. Where is his residence?

A. I do not know. He does not live in this State.

Q. What State?

A. I do not know.

Q. What State did he live in last, to your knowledge?

A. In Providence, Rhode Island.

Q. And you have not seen or heard of him in eight years?

A. Why, about that; seven or eight years.

Q. Either directly or indirectly?

A. I had one letter from him, from Providence.

Q. Lately?

A. No. I do not know—about seven years ago I think.

Q. You do not know whether he is living or dead?

A. No, I do not.

Q. Is he a married man?

A. He was, yes.

Q. Do you know into what family he married; his wife's name?

A. No, I do not. I never met her, to my knowledge.

Q. Is he younger or older than you?

64 A. Older.

Q. Do you know his age?

A. I think he is about 44.

Q. And you had no dealings with him of any nature, kind or description in the past eight years?

A. No, I have not seen him.

Q. What business is Louis in?

A. He is a lawyer.

Q. What city?

A. New York.

Q. Do you know where?

A. Yes—his residence you mean?

Q. His office.

A. Well, he has no office. He has an office home, 184th Street & Park Avenue I think it is.

Q. 184th?

A. Yes; and Park Avenue.

Q. And Park Avenue?

A. Yes sir.

Q. Is he engaged in any business outside of the law?

A. Yes sir; he is a builder and contractor.

Q. Under the same name?

A. Yes sir.

Q. Have you any parents?

A. Yes sir.

Q. What is your father's name?

A. Moser, M-o-s-e-r.

Q. Where does he live?

A. I do not know.

Q. When have you seen him last?

A. Oh, I have seen him on and off quite often for the past year.

Q. You do not know where he lives?

A. No sir.

Q. Does he live with your mother?

A. No.

Q. Where did he live last, to your knowledge?

65 A. I do not know. I have not seen him, until this year, for quite a few years.

Q. Well, hasn't he been to your home a great deal since last Christmas?

A. Yes, he has been there several times.

Q. He comes there to dinner frequently, doesn't he?

A. No, not for dinner; I do not believe he ever was in for dinner.

Q. Hasn't he been there a good deal for dinner while you were away?

A. I do not know; I was not there.

Mr. Fallon: If your Honor please, isn't it obvious that he does not know that?

Q. You have not been informed about that?

A. No sir.

Q. You do not know where he can be found?

A. He can be found in New York I suppose.

Q. You don't know where?

A. No; not at present.

Q. You would not know where to find him?

A. No.

Q. Can you fix the time when you heard from him last?

A. Well, I have not heard from him at all, only in personal conversation.

Q. When was the last time that you spoke with him?

A. When I spoke with him? I do not know.

Q. What year?

A. This year.

66 Q. And you cannot fix the month?

A. No.

Q. Well, can you say whether it was near the first of the year?

A. It may have been about that time; I do not know.

Q. Then you say it was about the first of the year, this year?

A. Just in a casual way; he comes up to the house occasionally, and goes about his business.

Q. You do not know where he lives?

A. No.

Q. You don't know what business he is in?

A. Well, he is in no business at present; I can tell you that.

Q. How old is he?

A. I think he is 76.

Q. Now, has he any bank account?

A. No.

Q. Or safe deposit box?

A. No.

Q. Well, have you?

A. I have two.

- Q. Where?
- A. One in the Pacific Bank.
- Q. A bank account?
- A. I had one there, yes. And also a box there. The other box I have jointly, together with my wife, I don't know, the Mortgage Trust Company I think it is.
- Q. U. S. Mortgage & Trust Co?
- A. Yes.
- Q. You say you have not any other bank account or safe deposit boxes?
- A. No sir.
- 67 Q. And you have not had any in the past two or three years?
- A. Oh yes; I did have one in the Harriman Bank. But I was only in that bank a short while.
- Q. In what name did you have the box in the Harriman Bank?
- A. In the name of Arnold.
- Q. J. W. Arnold?
- A. J. W. Arnold.
- Q. Did you ever have, in the past two or three years, any other bank accounts or safe deposit boxes?
- A. No sir.
- Q. Either in your own name or anyone else's name?
- A. No; none.
- Q. How?
- A. No; none whatever.
- Q. That account in the Pacific Bank, and the one in the U. S. Mortgage & Trust Co., in what names have you had those?
- A. I had no bank account in the U. S. Mortgage & Trust Co.
- Q. Well, let us stick to the U. S. Mortgage & Trust Co. You had a safe deposit box there?
- A. Yes; jointly, together with my wife.
- Q. In what name?
- A. Her name and mine.
- Q. In what name did you have that; Arnold?
- A. Arnold.
- Q. J. W. Arnold and wife; is that right?
- A. Yes sir.
- 68 Q. In the Pacific Bank you had your bank account in the name of J. W. Arnold?
- A. In the name of J. W. Arnold.
- Q. And the box, J. W. Arnold?
- A. Yes, J. W. Arnold.
- Q. You say you have not now, and never did have in the past three years, any other bank accounts or safe deposit boxes?
- A. That is right.
- Q. Directly or indirectly?
- A. No.
- Q. In your own name, or in the name of anyone else?
- A. No; that is right.
- Q. Or under your own control, or under the control of someone else; is that right?

A. That is right.

Q. Have you any stocks or bonds now?

A. I never had any in my life. I never owned a share of stock in my life. I never even saw a genuine certificate in my life. I never possessed one in my life, any negotiable stock.

Mr. Myers: Your Honor, I wish to call attention to the fact, and ask that this counsel be separated from this witness, or I will not go on with the examination in this room.

The Commissioner: Mr. Fallon, you had better shift your chair, and get away, and not address the witness at all. Do not do that.

Mr. Myers: I will not go on until he gets away from this witness.

The Commissioner: Mr. Arndstein, just change places with this man.

The Witness: I might say that Mr. Fallon is not coaching me; I am not listening to it, sir.

The Commissioner: I saw him.

Mr. Fallon: I have advised the witness to refuse to answer all these questions.

(The Commissioner directs Mr. Fallon to sit further away from the witness.)

Mr. Fallon: I promise your Honor that we won't come in personal contact again.

Q. Will you let me have your mother's name?

A. Yes. Thekla Geraldina.

Q. T-e-r——

A. T-h-e-k-l-a Geraldina Van Show.

Q. V-a-n?

A. S-h-o-w.

Q. Where is your mother now?

A. I do not know.

Q. When did you see her last?

A. Oh, quite a long time ago.

Q. How long ago?

A. She was very sick at that time; perhaps——

Q. (Interrupting.) How many years ago?

A. Oh, six or seven months I should say.

70 Q. Six or seven months ago?

A. Five or six months; I cannot state the exact time.

Q. Well, was it since the 1st of January this year?

A. I do not know.

Q. What is your best recollection?

A. I have no recollection, because my mind was so disturbed, that I cannot think of it. I have no recollection of it. If I had more time to think, Mr. Myers, perhaps I could be of much more service to you.

Q. You have had three months to think.

A. Yes.

Q. Do you know where you could reach your mother now?

A. No. I have an idea though.

Q. Where?

A. In the Bronx, in New York, through my wife.

Q. You do not know on what street your mother lives?

A. No.

Q. And you would not know where to address her?

A. No.

Q. Or where to telephone her that you came back?

A. No. I would not.

Q. You are on friendly terms with your parents?

A. Yes sir.

71 Q. Have you had any communication, directly or indirectly, with your parents, since you left New York on or about Lincoln's Birthday this year?

A. No, I have not.

Q. You have told us about your mother and your father and your brothers. Have you any sisters?

A. Yes.

Q. What are their names?

A. One is Gesina.

Q. Eugenia?

A. G-e-s-i-n-a. The other one is Johanna.

Q. Are they married?

A. Both married.

Q. To whom is Gesina married?

A. To Mr. Wallace Young.

Q. Mr. Wallace Young of Larchmont?

A. Of Larchmont.

Q. And Johanna?

A. I do not know whether she is married or not. I do not know whether she has got a divorce or not. I have not seen her in a long time.

Q. To whom was she married last?

A. I do not know. I never met the man; I was not here; I was in Europe.

Q. Well, are you on friendly terms with her?

A. I would be if we were to meet, yes.

Q. How many years has it been since you last met her?

A. Oh, I saw her once in the last perhaps five years.

Q. Was that this year?

A. Yes.

Q. You do not know the name of her husband?

A. I did know, but I have forgotten.

Q. Where did they live last?

A. I could not tell you.

72 Q. What information have you ever had as to where they lived?

Mr. Fallon: Your Honor, is that material?

Mr. Myers: I am trying to find out all the names of different safe deposit boxes and bank accounts, in which securities have been hidden. There is no concealment about the purpose of these questions.

Mr. Fallon: But he is asking about brothers and other relatives—

Mr. Myers (interrupting): That is the most likely place to hide them in, except in other cities.

The Commissioner: Go on, Mr. Myers.

Q. Have you told the Court the names of all your relatives; your parents and your brothers and sisters?

A. Yes, sir.

Q. You would not know where to find your sister Johanna?

A. No sir.

Q. You would not know where to find your mother?

A. Well, I did not say that.

Q. Well, I am asking you.

A. I do not know her address I said.

Q. Would you know where to find her to-day, to greet her?

73 A. Well, I think it would be easy enough to find her, through my wife.

Q. Your wife knows?

A. Yes.

Q. Will you ask her so that you can testify?

A. My wife is not testifying just now.

Q. She is here; won't you ask her so that you can testify?

Mr. Fallon: That is not a proper question, surely.

Mr. Myers: I want to know the whereabouts of his mother. I want him to ask his wife so that he can testify.

The Witness: I do not care to ask her just now. I believe if you ask her, she will answer you, and tell you the truth.

Q. But you won't ask her?

A. You can ask her; there she is.

The Commissioner: That is wasting time; let us get some place.

Q. Have you in the past year given any property of any nature, kind or description, to your parents or brothers or sisters?

A. No.

Q. Or any securities of any kind?

A. No.

Q. Or any money?

A. No.

Q. Have you any safe deposit boxes in any of their names?

74 A. No.

Q. Or any bank accounts in any of their names?

A. No.

Q. Are they holding any property for you, of any nature, kind or description?

A. No.

Q. Have you any bank account in any other name?

A. No.

Q. Or any safe deposit box in any other name?

A. No.

Q. Did you ever open any bank account in any other name?

A. No.

Q. Or any safe deposit boxes in any other names?

A. No sir.

Q. What is your wife's full name?

A. Fannie.

Q. Do you know her mother?

A. Yes sir.

Q. Do you know where she lives?

A. Yes.

Q. Is her name Dora?

A. No; Rosa.

Q. Rosa. Do you know her address?

A. No.

Q. Do you know the street?

A. Yes.

Q. What street?

A. I am not sure; I think it is 135th Street; I am not sure though.

Q. Have you talked with any of your brothers or sisters, or your parents, since the first of this year?

A. No.

75 Q. Have you talked with your wife since Lincoln's Birthday this year?

A. When was Lincoln's Birthday?

Q. February 12th.

A. No.

Q. Have you communicated with your wife since Lincoln's Birthday this year?

A. No.

Q. Directly or indirectly?

A. No.

Q. Have you received any communication from your wife since Lincoln's Birthday, either directly or indirectly?

A. I refuse to answer, on the same ground.

Mr. Fallon: I think your Honor should advise the witness—

The Commissioner (interrupting): I have advised the witness, he is an intelligent man, what his legal rights are: That he can refuse to answer any question, the answer to which he believes will tend to incriminate or degrade him. I have told him twice now.

Mr. Fallon: At the same time this man is indicted on a criminal charge, and I do not think he ought to answer any of these questions.

The Commissioner: There is no harm, Mr. Fallon, at all. So far he has not answered a question that is in any way material, so far as I can see, that would tend to incriminate or degrade him.

76 Q. Do you know the name of any sister of your wife?

A. Yes; one.

Q. What are their names?

A. Caroline I believe; I am not sure.

Q. And the last name?

A. I do not know. She is married.

Q. Is that the one that is married to Mr. Russak?

A. I do not know whether that is his name or not.

Q. What other sisters are there?

A. I think that is all; I am not sure.

Q. Well, haven't you met her sister?

A. Yes; I met her once or twice.

Q. How?

A. I met her several times.

Q. And you do not know her last name?

A. No, I do not.

Q. You don't mean that, do you?

A. I do. It never interested me enough to find out.

Q. You never asked?

A. No.

Q. Your wife's sister, her name?

A. I may have known it, but I have forgotten it since.

Q. Did you meet her husband?

A. I think I did, before they were married.

Q. Not since?

A. I may have; I don't remember.

Q. What is your best recollection?

77 A. I do not remember, really.

Q. What business is Caroline's husband in?

A. I do not know.

Q. When did you see him last?

A. I do not recall. I do not remember seeing him at all.

Q. You never saw him since he has been married?

A. I don't think so.

Q. How long has he been married?

A. I do not know.

Q. What is your best recollection on that point?

A. I do not know; I haven't got the slightest idea. It never interested me sufficiently for me to find that out.

Q. Well, haven't they been to your home quite a bit?

A. Not in my presence, to my knowledge.

Q. What?

A. Not in my presence, to my knowledge.

Q. Do you know of any other sisters of your wife, Fannie?

A. No.

Q. Or any brothers?

A. Yes.

Q. What are their names?

A. One is Lew. And the other one is Phil.

Q. Is Lew married?

A. I don't think so.

Q. Where does he live?

A. I don't know.

Q. Is Phil married?

A. No.

- Q. Where does he live?
A. He lives with his mother.
- 78 Q. When did you see Lew or Phil. last?
A. Oh, I didn't see them—I saw Phil. about the time I left, I should think. I have not seen the other chap.
- Q. Do you know of any other brothers or sisters of Fannie Brice?
A. No.
- Q. Has she a father?
A. No; he is dead.
- Q. You have told us all the relatives now, on your side and on your wife's side?
A. As far as I know, on her side.
- Q. Well, can you think of any others?
A. No.
- Q. Now, have you any securities in your wife's name, other than you have told us about?
A. I have not.
- Q. Have you any bank accounts in the name of your wife or her parents or brothers or sisters?
A. No.
- Q. Or any safe deposit boxes in their names?
A. No.
- Q. Have you heard, directly or indirectly, from Phil. or Lew Brice since you left New York on February 12th this year?
A. No.
- Q. Or from Rosa?
A. No.
- Q. Then your statement is that since you have left New York you have not heard from any of your relatives on either side?
A. That is it.
- Q. Is that right?
A. That is right.
- 79 Q. Directly or indirectly?
A. That is right.
- Q. In no shape, manner or form?
A. That is right.
- Q. And you have received no money from any of them?
A. No.
- Q. Directly or indirectly?
A. That is right.
- Q. You have given no money to any of them, directly or indirectly, since the 12th of February this year?
A. That is right.
- Q. And you have given them no property?
A. Nothing.
- Q. Of any nature, kind or description?
A. No.
- Q. Is that right?
A. That is right.
- Q. And have received none?
A. That is right.

Q. When did you see Joe Gluck last?

A. I cannot answer any further questions, on the ground that it may incriminate me, Mr. Myers; and also by advice of my counsel.

Q. You say it would incriminate you to talk about Joe Gluck?

A. Yes sir.

Q. Do you say whether you know him or not?

A. I cannot answer any questions, on the ground that it may incriminate me.

The Commissioner: Mr. Arndtstein, the question of whether you know a person or not, on what ground do you decline to answer? Would the answer thereto tend to degrade you, or incriminate you?

The Witness: Both, sir.

Q. Do you know Irving Gluck?

A. I cannot answer, for the same reason that I just stated.

Q. Do you know Rudolph Bunora?

A. I cannot answer, for the same reason.

Q. Do you know Herbert Bunora?

A. I cannot answer, for the same reason.

Q. Do you know Murray Fox?

A. I cannot answer, for the same reason.

Q. Do you know James Kean?

A. I cannot answer, for the same reason.

Q. Do you know David Haines?

A. I cannot answer, for the same reason.

Q. Do you know Ed. Furey?

A. I cannot answer, for the same reason.

Q. Do you know David Sullivan?

A. I cannot answer, for the same reason.

Q. Do you know Norman S. Bowles?

A. I cannot answer, for the same reason.

Q. Do you know W. W. Easterday?

A. I cannot answer, for the same reason.

Q. Well, do you know Hartford Jimmy?

81 A. I cannot answer, for the same reason.

Q. Do you know Al Hunter?

A. I cannot answer, for the same reason.

Q. Do you know Billy King?

A. (No answer.)

Q. (Question repeated.)

A. I cannot answer, for the same reason.

Q. Do you know Phil. Kastel?

A. I cannot answer, for the same reason.

Q. Do you know Nick Cohen?

A. I cannot answer, for the same reason.

Q. Do you know Charlie Druckker?

A. I cannot answer, for the same reason.

Q. Do you know Eddie Winkler?

A. I cannot answer, for the same reason.

Q. Do you know Arthur Ecremont?

A. I cannot answer, for the same reason.

Q. What is there about all of these people that you do not want to identify yourself with them?

A. Well, I believe I am up on criminal charges, and I do not wish to incriminate or degrade myself.

Q. Are these people involved with you?

A. I do not know.

Q. In this business at all?

82 A. I do not know; I cannot answer, for that reason.

Q. Were they working with you?

A. I cannot answer.

The Commissioner: Have you had any business relations with them, Mr. Arndtstein, or with any one of the persons that Mr. Myers has questioned you about?

Mr. Fallon: Will your Honor instruct the witness that he has the same right to refuse to answer your Honor's questions as any others?

The Commissioner: Yes.

Mr. Myers: Cannot your Honor see that Mr. Fallon is making a fool of you? Because he has just tipped this man off how to answer that question.

Mr. Fallon: I think my friend goes pretty far when he makes that kind of a statement: "He is tipped off now." And if he is tipped off, he is only apprised of his rights, and he is entitled to know those.

The Commissioner: Have you had any business relations with any of those men that Mr. Myers has questioned you about?

The Witness: Your Honor, I cannot answer that, for the same reason: That it may incriminate or degrade me.

The Commissioner: Proceed, Mr. Myers.

Q. Did you ever know Mortimer Bernstein?

83 A. I cannot answer.

Q. You mean you refuse to answer?

A. I cannot, on the ground it may incriminate and degrade me.

Q. Are you going to say that to every question?

A. Well, all questions that may degrade me or incriminate me, I will.

Q. Do you know Louis Bleet?

A. I cannot answer that, for the same reason.

Q. Do you know Cheeks Ginsberg?

A. I cannot answer, for the same reason.

Q. Who do you know in Cleveland?

A. I do not know as I know anyone there.

Q. Well, do you know anyone there?

A. I cannot answer, for the same reason.

Q. Do you know Samuel T. Haas, an attorney?

A. I cannot answer, for the same reason.

Q. Do you know Joseph Klein?

A. I cannot answer, for the same reason.

Q. Do you know Don Lloyd?

A. I cannot answer, for the same reason.

Q. Do you know Dan Lloyd?

A. I cannot answer, for the same reason.

Q. Do you know Joe Marino?

84 A. I cannot answer, for the same reason.

Q. Do you know George Hackett?

A. I cannot answer, for the same reason.

Q. Do you know Sam Gireau?

A. I cannot answer, for the same reason.

Q. Do you know Michael Radus?

A. I cannot answer, for the same reason.

Q. Is Michael Radus related to you?

A. No sir.

Q. Is he related to your wife?

A. I cannot say; I do not know.

Q. You don't know?

A. No.

Q. Don't you know he is related to you?

A. (No answer).

Q. Don't you know this man? (Showing witness photograph, Exhibit 6 for identification of April 28th 1920).

A. I cannot answer, for the same reason: It might incriminate me.

Q. You won't say whether you know that man or not?

A. I cannot say, for the same reason.

Q. Do you know this man? (Showing witness photograph, Exhibit 5 for identification of April 28th 1920).

A. I cannot answer, for the same reason: That it may incriminate me.

85 Q. Do you know this man? (Showing witness photograph, Exhibit 10 for identification of April 28th 1920.)

A. I cannot answer, for the same reason: It may incriminate me.

Q. Do you know this man? (Showing witness photograph Exhibit 5 for identification of April 28th 1920).

A. I cannot answer, for the same reason.

Q. Do you know this man? (Showing witness another photograph.)

A. I cannot answer, for the same reason.

Q. Do you know Mattie Pandolfi?

A. I cannot answer, for the same reason.

Q. Were you ever in Bridgeport, Connecticut?

A. Yes.

Q. When?

A. About five years ago.

Q. Not since?

A. No.

Q. Who do you know there?

A. No one, to my knowledge.

Q. Who do you know?

A. Nobody, to my knowledge.

Q. Just there on a visit?

A. I was motoring through.

Q. How?

A. I motored through.

Q. You do not know anyone there?

A. No.

Q. Do you know Joe Peppe?

A. I cannot answer, for the same reason.

Q. Do you know Jimmy Ryan?

86 A. I cannot answer, for the same reason.

Q. Do you know E. B. Strong?

A. I cannot answer, for the same reason.

Q. Do you know Frank Thompson?

A. I cannot answer, for the same reason.

Q. I show you a list of securities and ask you whether you ever had any of these securities in your possession or under your control? (Handing witness.)

A. I cannot answer, for the same reason.

Q. Well, look at it; you cannot answer until you look at it.

The Commissioner: Use some judgment.

The Witness (after examining list): I cannot answer, for the same reason; it may incriminate me.

List marked Exhibit 1 for identification of this date.

Mr. Meyers: I submit, your Honor, there is no use going on with the examination in this way, because the witness is under instructions of counsel, and is going to make the same answer to every question.

The Commissioner: Mr. Myers, you might call his attention to it, and ask him whether he owned any securities at any time, and state when it was; get it that way.

87 Q. Did you ever have any of the securities referred to in this list—

The Commissioner (interrupting): No; just ask him generally, if he ever has owned any bonds or securities in the last six months or year, or any time you want to cover.

Mr. Myers: Well, he said no.

Q. Did you ever have any stocks or bonds in your possession or under your control, at any time during the past year?

A. I never owned a share of stock; I never had a share of stock that was good, to my knowledge, in my life.

Q. What do you mean by "good"?

A. Well, anything that was negotiable.

Q. What?

A. Nothing negotiable.

Q. Did you have any that were not negotiable?

A. Yes; I bought some years ago.

Q. We are taking about the past twelve months.

A. No sir.

Q. Have you had any stocks or bonds in your possession or under your control at any time during the past year?

A. I just answered that.

Q. No; I did not get the answer. (Question read.)

88 A. I answered that; I said no.

Q. Did you ever see any stocks or bonds during the past year, anywhere?

A. I cannot answer that, on the same ground: It may incriminate me.

Q. Did you touch any stocks or bonds any time, or any place, within the past year?

A. I cannot answer, for the same reason.

The Commissioner: Ask him whether he bought or sold any.

Q. Did you buy or sell any shares of stock or bonds at any time during the past year?

A. I cannot answer, for the same reason.

Q. Do you know any stock brokers?

A. I cannot answer, for the same reason.

The Commissioner: Answer yes or no. That answer cannot tend to incriminate or degrade you.

The Witness: Yes sir.

Q. Who do you know?

Mr. Fallon: Your Honor does not insist that the witness answer that question?

The Commissioner: No.

89 Mr. Myers: Don't you see, your Honor, that he has tipped him off what to answer, again? It is apparent to everybody else.

The Commissioner: Proceed, Mr. Myers.

Mr. Myers: No; I will not proceed at all. He has been tipped off now. I am not going to be made a fool of. I won't ask that question now.

Q. Do you say that you never had in your possession or under your control, a single share of stock, or bond mentioned in this list Exhibit 1 for identification of this date?

A. Is that what you showed me before, this one here?

Q. Yes.

A. I cannot answer, on the ground it may incriminate me.

Q. Well, do you say that you never saw those securities?

A. I cannot answer, for the same reason.

Q. You say you never touched them?

A. I cannot answer, for the same reason.

Q. Did you ever see them in anyone else's possession?

A. I cannot answer that.

Q. Will that degrade you?

A. Yes sir; both ways; and incriminate.

Mr. Myers: I submit, your Honor, that is clearly impossible.

90 The Commissioner: Mr. Arndtstein, answer that question: Whether you saw them. That would not incriminate you or degrade you.

The Witness: I beg pardon sir?

The Commissioner: That would not tend to incriminate or degrade you, if you have seen them.

Mr. Fallon: Yes, it might, your Honor. That may be a circumstance which would lead to other circumstances.

The Commissioner: No.

Mr. Fallon: May we, *will* all due respect—

The Commissioner (interrupting): He may have seen a gold watch in a jewelry store; that would not incriminate or degrade him.

Mr. Fallon: That may be true; but he may have seen it when it was not in the jewelry store. And that might tend to incriminate him.

The Commissioner: That will not tend to incriminate him.

The Witness: I can answer that.

Mr. Myers: The witness just said he is willing to answer.

The Commissioner: Answer the question.

The Witness: No.

Q. (Question read as follows:) Did you ever see them
91 in anyone else's possession? You understand the question?

The question is: Did you ever see any of those shares of stock or bonds mentioned on this list, which is Exhibit 1 for identification of this date, in the possession of any other person, or in anyone else's control?

A. No sir.

Q. At any time or place?

A. No.

Q. Did you ever go to Washington with Nick Cohen?

A. I cannot answer, on the ground that it might incriminate me.

Q. Did you ever meet Nick Cohen in Washington?

A. I cannot answer, for the same reason.

Mr. Myers: I submit that meeting a man in Washington, your Honor, could not be in any way incriminating evidence here. He is held for Grand Larceny in the Court of General Sessions in New York.

Mr. Fallon: It is not a question of what he is held under. It is not a question of whether he may be guilty of any crime at all. It is not necessary for a man to be under indictment for him to have that privilege. He is entitled to it whether he is indicted, arrested, or anything else.

Mr. Myers: He has got to be able to satisfy the Court that
92 there is a possibility of indictment. He has got to satisfy the Court that it has some relevancy to the commission of a crime.

The Commissioner: It is a circumstance. Proceed, Mr. Myers.

Mr. Myers: All right, sir.

Q. Have you invested any money anywhere in the past year?

A. I cannot answer that, for the same reason.

Q. Have you handled any moneys since Lincoln's Birthday this year?

A. I cannot answer that, for the same reason.

Q. Have you had any property in your possession anywhere since Washington's Birthday this year?

A. I cannot answer, for the same reason.

Mr. Myers: Well, I submit, your Honor, I am asking him about property belonging to this estate; not referring to the commission of any crime.

(Question read.)

The Witness: I cannot answer, on the ground it may incriminate me.

Mr. Myers: Will your Honor instruct him to answer that question?

The Commissioner: Answer that question. That cannot incriminate you.

Mr. Fallon: Just with a yes or no answer, I take it?

The Commissioner: Yes; just yes or no.

The Witness: What was the question again please?

(Question re-read.)

The Witness: No sir.

Q. Have you had any money in your possession since Washington's Birthday this year?

A. Yes.

Q. How much?

A. About \$500.

Q. Where did you get it?

A. Where did I get it? I got it from my wife.

Q. Before you left?

A. Yes sir.

Q. And that is all you had?

A. That is all.

Q. You have only had \$500 since Washington's Birthday this year?

A. Yes.

Q. And you have been stopping at various hotels, haven't you?

A. No sir.

Q. How?

A. No sir.

Q. Haven't you stopped at any hotel since you left here?

A. I said no.

Q. Well, hasn't it cost you money to live since you have been away?

A. I refuse to answer, on the ground that it may incriminate me.

The Commissioner: No. Answer the question: If it cost you money to live.

Mr. Myers: He has again instructed the witness. This is getting to be a Police Court proceeding, your Honor. He has instructed him now; it is too late for you to rule now.

Mr. Fallon: I have not instructed the witness; but the witness has the right, with all due respect to your Honor's ruling, to differ with your Honor's suggestions; he still would maintain his personal prerogative.

The Commissioner: That is not privileged. He must have paid expenses.

Mr. Fallon: But I say, your Honor, that might very well be a circumstance that would be considered in the trial.

The Commissioner: He must have lived, Mr. Fallon.

Mr. Fallon: He must have lived, of course. But going into the question of where he got the money, under these various circumstances, certainly ought not to be permitted at this time.

The Commissioner: That question is not objectionable at all. Repeat the question please.

95 Q. (Question read as follows:) Well, hasn't it cost you money to live since you have been away?

A. No sir.

Q. Where have you been living?

A. I cannot answer that, on the ground it may incriminate me.

The Commissioner: Answer the question, Mr. Arndtstein, as to where you were living.

Mr. Fallon: I submit, your Honor, that may be a part—

Mr. Myers (interrupting): I ask that this counsel be ejected from the room, your Honor. It is too late for your Honor to say now that it is out—now the damage is done.

The Commissioner: No. He will answer the question.

Mr. Myers: It is too late now.

The Commissioner: He will answer the question.

Mr. Myers: But he has been tipped off by this lawyer.

The Commissioner: Not yet.

Mr. Myers: Yes, he has.

The Commissioner: Answer the question, Mr. Arndtstein. Get an answer.

Q. (Question read as follows:) Where have you been living?

96 The Commissioner: Answer that question, Mr. Arndtstein.

The Witness: I have been living in various places; I have been traveling.

Q. State them.

A. Traveling through the United States.

Q. State them; where?

Mr. Fallon: Now I ask your Honor to instruct the witness that he may claim his privilege to that question.

The Commissioner: The places where a man may be; there is not anything at all that would tend to incriminate or degrade him.

Mr. Fallon: Oh, there may be, your Honor, or may not be. It might be a circumstance in connection with other things, and he knows best whether it is; and he has the right to refuse to answer any question which may be an incidental fact in this case.

The Commissioner: There are no surrounding circumstances at all there is nothing here to show.

Mr. Fallon: Of course there is not; but what may be shown in this other case; there is nothing shown here, but they may confront him in another place, in a different set of facts, where he has the right to claim his privilege. I will ask your Honor to instruct this witness that if he does di-regard your Honor's instructions to answer, that he does it with all due deference, and that you understand that he is simply asserting his legal right, and that he is not contentious about the matter; but that he simply is endeavoring to protect himself, under the advice of his counsel.

Mr. Myers: Does this case differ, your Honor, from any other bankruptcy case, just because it is Mr. Arndtsein?

The Commissioner: No.

Mr. Myers: You have ruled here dozens of times that a witness must answer that question.

The Commissioner: The question of whereabouts a man may be, cannot tend to incriminate or degrade him. Which ground do you put that on, Mr. Arndstein?

The Witness: Incriminate me, sir.

The Commissioner: That cannot incriminate you. It might degrade you, but not incriminate.

The Witness: Well, I would say both, sir.

The Commissioner: You might be in a place where you should not be; that would tend to degrade you; but not incriminate you.

Now state whereabouts you may have been.

The Witness: I cannot answer that, your Honor.

The Commissioner: Will it tend to degrade you?

The Witness: Degrade and incriminate, both.

The Commissioner: No; which is it? Degrade or incriminate?

The Witness: Degrade, sir.

Mr. Myers: This is the first time any witness has been able to get away with that before this Court.

The Commissioner: Mr. Arndstein, during your absence from the State of New York, have you been anywheres else that would tend to degrade you or have you done anything at all that would tend to degrade you?

The Witness: Well, it might be looked upon that way, your Honor.

The Commissioner: No; answer the question. Not what might be; but what was? Did you do anything, or have you been anywheres since the 12th of February last, that would tend to degrade you? Either yes or not. Now, do you understand the question?

The Witness: Yes sir.

The Commissioner: Have you been anywheres, or have you done anything since the 12th of February last, that would tend to degrade you?

99 Mr. Fallon: Now, if your Honor please——

The Commissioner (interrupting): I am asking that question, Mr. Fallon.

Mr. Fallon: If your Honor will allow me to put on the record: It is not whether he had done anything that would degrade him, but whether or not this question might tend to be proof of something that would degrade or incriminate him. That is the point.

The Commissioner: No; I am trying to get into the mind of this witness this fact: Would anything he has done since the 12th of February last, or where he has been, tend to degrade him?

Mr. Fallon: Well, his position is that he refuses to answer simply for this reason: Not whether he has or has not done——

The Commissioner (interrupting): No. Has he done anything in that time, or been anywhere, that would tend to degrade him?

Mr. Fallon: Maybe I do not make it very clear to your Honor: But the question is not whether he has done those things or not. He claims his privilege, that this question may tend to prove that conclusion——

The Commissioner (interrupting): But it is testing him out
100 as to whether he has done those things or not.

Mr. Fallon: He has the right to refuse to answer on the ground it tends to incriminate him; and to ask him if he did anything to degrade him, takes away his privilege; because, if you ask him that, you may ask him the whole question.

The Commissioner: No; I did not ask him that.

Mr. Fallon: If he should answer that question "Yes," of course he would be deprived of his privilege, and it might place him in a position that he would have something to explain later on.

The Commissioner: I do not believe you understand, when I make the statement, "tend to degrade him," I am trying to put it in a form what he does know.

Mr. Fallon: I ask your Honor to explain to the witness that under these circumstances, he has the right to contend that he has the Constitutional privilege to refuse to answer any question of that kind.

The Commissioner: Any of what kind?

Mr. Fallon: Any question of any kind.

The Commissioner: He is not asked whether he has committed any crime at all.

Mr. Fallon: Yes; he is asked if he did anything that is
101 incriminating; anything that would degrade him. He has the right to refuse to answer those questions.

The Commissioner: The question of where a man has been: Has he been in any unlawful place, or a place that it is morally wrong to be, or which would tend to degrade him.

Mr. Myers: This man, your Honor, has been charged with Grand Larceny in the first degree, in connection with the theft of certain bonds, of \$142,000. Now, there has hardly been a bankruptcy proceeding in this Court in the past twenty years that you and I have been here, that there has not been somewhat the same situation: The bankrupt coming in here, and he has been indicted over in the

Court of General Sessions, and has your Honor ever allowed any bankrupt to get away with the proposition that he would not have to explain where he has been since the filing of the petition in bankruptcy, or the cities, whom he talked with, where he went, what he did?

The Commissioner: Yes, one case.

Mr. Myers: Where?

The Commissioner: The case of Dr. John Grant Lyman. He refused to answer his name.

Mr. Myers: Well, he went to Atlanta.

102 Mr. Fallon: That has nothing whatever to do with this case. You see, Mr. Myers is always facetious, but never logical. The proposition that we have before this Court is: What right a man has to refuse to answer a question. Now, where he was at a given time may or may not be material upon any criminal proposition. Suppose a certain number of parties to a robbery were in a certain place. If this man were in that place at that time, actually that might incriminate him, or it might be a fact or circumstance. He has the right to refuse, under those circumstances, lest the suspicion of the mere accidental happening that he was in that place at a certain time, be argued against him, and urged against him in another Court, on a different charge. That is what we have here: Not that which is material here; but what must he face in another place?

Mr. Myers: I want to be able to prove, your Honor, that he took large amounts of securities from this City, and went traveling around to various cities in this country and elsewhere, to deposit those securities in hide and go seek places. Now I want to know all about that; I am entitled to. I represent Judge Gildersleeve here, the

103 Trustee, and we are determined to get to the bottom of this matter, Arndtstein or no Arndtstein. He is not entitled to any different consideration from any other bankrupt in this Court.

Mr. Fallon: I do not think he asks any different consideration; he is not getting any. I know that your Honor's rulings are simply rulings in accordance with the law.

Mr. Myers: I want to know where he has been, so I can find out from other sources whether he has deposited securities in banks, trust companies, or in offices of crooked brokers in other cities. That is what I want.

Mr. Fallon: My friend constantly argues himself right out of any situation. He now claims he is trying to prove something in this proceeding which may be used against this same man some place else. By his very suggestion, he strengthens the argument himself, and only proves the fact that the very question he asked, the witness has the right to decline to answer.

The Commissioner: Mr. Myers, in view of your statement, you had better withdraw that question. You may ask it in another form and get the same result, perhaps.

Mr. Myers: I did not get that.

The Commissioner: You had better withdraw that question, in view of your statement.

Mr. Myers: No; I withdraw no statement or no question.

The Commissioner: I will sustain the objection.

Q. Will you state where you were this morning, before you went to Court?

A. I cannot answer.

Q. On what ground?

A. On the ground it may incriminate me.

Mr. Myers: He might have gotten off the train and gone to a safety deposit box and put a million dollars of Liberty Bonds in the name of Fannie Brice.

Mr. Fallon: And any Court would consider that as bearing upon the indictment. It would not have anything to do with it, my friend would suggest. Every time he argues he proves he is wrong.

The Commissioner: Next question, Mr. Myers.

Q. Will you state your movements from the time you arrived in New York City this morning?

Mr. Fallon: We have been over that question several times. If my friend wants to stay here until the middle of the night, I suppose your Honor will have to tolerate it. But in the very beginning of this examination we have the same answer to that question: That he would not answer it, and your Honor conceded that was a proper stand to take. If he wants to re-hash it, or re-iterate it, I suppose we have got to stay.

The Commissioner: Next question.

Q. Will you state with whom you spoke in New York today?

A. I cannot, for the same reason.

Q. Did you talk with Mr. Fallon this morning before you went to Court?

A. I cannot answer, for the same reason.

The Commissioner: One moment, Mr. Arndtstein. Do not make things ridiculous. The fact that you talked to Mr. Fallon cannot incriminate you or degrade you, as far as I know. Now answer the question.

Mr. Fallon: I hope your Honor is taking official notice of that.

The Commissioner: Your client don't seem to think so. Now Mr. Arndtstein, what is your answer?

The Witness: Yes sir.

Q. With whom else did you talk?

A. To my wife.

Q. Who else?

A. And I believe a reporter that got on the running board of the cab.

Q. What cab was that?

A. It was an automobile.

- Q. Whose automobile?
A. My wife's.
- 106 Q. What kind of a machine?
A. A gasoline car.
- Q. What is the name of the car?
A. Cadillac.
- Q. Does it belong to you or your wife?
A. My wife.
- Q. Did you buy it?
A. No.
- Q. When was it bought?
A. That I do not know. Some time ago.
- Q. This year?
A. No.
- Q. Last year?
A. Yes.
- Q. Where?
A. In Philadelphia.
- Q. From whom?
A. I do not know. From some dealer there.
- Q. How?
A. Dealers.
- Q. What is the name?
A. I also refuse to answer that, on the ground that it may in-
criminate me.

The Commissioner: The fact of your wife buying a machine would incriminate you, Mr. Arndtstein? Do you understand what that means?

The Witness: I beg your pardon, sir.

The Commissioner: The fact that your wife bought a machine, would that tend to incriminate or degrade you?

Mr. Fallon: Well, he can refuse to answer—

The Commissioner (interrupting): One moment, Mr. Fallon, please.

107 Mr. Fallon: The fact is not whether it does or not—

The Commissioner (interrupting): I am calling his attention to the fact that he is making the statement that in view of the fact that his wife bought a machine, would not tend to incriminate or degrade him. That is carrying his privilege too far.

The Witness: Your Honor, he did not ask me that. He asked me who the machine was bought from.

The Commissioner: Well, that cannot tend to incriminate or degrade you.

Mr. Fallon: He says he does not know.

Mr. Myers: He will say now he does not know, because Mr. Fallon told him. Judge Hough would not tolerate this.

The Commissioner: It is not what somebody else would do, but what I am doing now.

Q. Will you answer that question?

A. I cannot answer.

Q. Is that because Mr. Fallon told you?

A. No, sir.

Mr. Myers: Will you repeat the question please?

(Question read.)

Q. Will you please give the name of the dealer from
108 whom that Cadillac car was bought in Philadelphia?

A. I do not know. The bill of sale will show it. I do not know.

Q. Where is the bill of sale?

A. I do not know.

Q. When did you see it last?

A. I do not know.

Q. Is the bill of sale in your name, or in the name of your wife?

A. My wife's name.

Q. Who put up the money?

A. She did.

Q. By check?

A. No—I do not know, really.

Q. Didn't you give your check?

A. No.

Q. Didn't you handle the transaction?

A. No.

Q. Weren't you in Philadelphia when the deal was closed?

A. Yes.

Q. And who was the party?

A. I do not know.

Q. You don't know?

A. A second hand dealer.

Q. You don't know with whom you talked in Philadelphia when you bought that fine new Cadillac car?

Mr. Fallon: He just said it was a second hand car.

A. Second hand car; a second hand dealer it was.

Q. Well, did you go to Philadelphia to buy the car?

A. No.

Q. Were you just there on other business?

A. Well, I was not on any business.

Q. You went to buy the car, didn't you?

A. No, sir.

109 Q. Why did you go there?

A. I just went to Philadelphia like anyone would go.

Q. You must have had some purpose in going; either business or pleasure.

A. Well, it was pleasure then.

Q. You did not just go riding around from Philadelphia to New York, backward and forward, did you?

A. No; I came up from Atlantic City, I recall.

Q. That is what we want to know. You went down to Atlantic City, and you went over to Philadelphia, and you saw a nice second hand Cadillac, and you bought it?

A. I did not buy it.

Q. You bought it for your wife?

A. I did not buy it.

Q. You bought it with your wife's money?

A. No; she bought it.

Q. You were the person that handled the transaction, weren't you?

A. No, I was not. I passed on the car.

Q. You said whether it was all right or not?

A. Yes.

Q. Is that right?

A. Yes.

Q. Where was that car?

A. I don't know. I do not know Philadelphia very well. It was in a row of all second hand stores. I did not take any particular attention to the store.

Q. How did you come to go there?

110 A. Looking in the window and saw it in the window.

Q. Just strolling around?

A. Yes.

Q. All alone?

A. No.

Q. Who was with you?

A. Well, I do not know who was with me.

Q. Well, someone was with you?

A. Well, I do not remember who was with me. Perhaps some dealer was.

Q. What is your best recollection?

A. Something like that.

Q. Who came over from Atlantic City with you?

A. No one.

Q. You just went over to Philadelphia from Atlantic City all alone?

A. Yes sir.

Q. Without intending to buy a car?

A. Yes sir.

Q. You had no such intentions?

A. No.

Q. Can you tell the month?

A. No, I cannot.

Q. Can you state the year?

A. It was last year.

Q. Can you state whether it was in the Winter or the Summer?

A. No, for the reason that I bought several cars myself, and that was not a thing for me to remember. I disposed of them.

Q. Yes; but I want you to concentrate on that Cadillac car.

111 Will you please state the month that you were in Atlantic City, just before you went to Philadelphia?

A. I cannot.

Q. Was it last Winter?

A. No; it was in the Summer.

Q. Last Summer?

- A. Or in the Fall I should say.
Q. Well, last September?
A. I do not know what month.
Q. October?
A. I do not know.
Q. November?
A. I do not remember.
Q. December?
A. I do not remember.
Q. Was it June?
A. I do not remember.
Q. July?
A. I do not know.
Q. August?
A. I do not know.
Q. What is your best recollection?
A. I do not know. I have no memory for that.
Q. You have no memory?
A. Not for that.
Q. Where did you stop at Atlantic City?
A. At the Traymore.
Q. Alone?
A. Alone.
Q. Under your name?
A. I think it was the Traymore.
Q. J. W. Arnold?
A. (No answer.)
Q. (Question repeated.)
A. No; I stopped there—I am not sure it was in the name of Arnold.
Q. Now think a bit, because we want to know something about it.
A. Yes. Well, I cannot remember, Mr. Myers.
112 Q. What other hotels do you usually go to when you go to Atlantic City?
A. Any one that may have room for me.
Q. You first make a try at the Traymore?
A. Not necessarily. I prefer others to the Traymore.
Q. Which do you prefer?
A. I cannot think of the names.
Q. The Shelburne?
A. Well, I would prefer that to the Traymore, yes.
Q. Then you think you may have been at the Shelburne?
A. I cannot.
Q. Were you ever at the Meletaska?
A. I do not think so.
Q. No, you must know whether you were at the Meletaska Hotel last Fall.
A. I cannot say, really, Mr. Myers. I cannot say; I do not know; because I did not pay it any particular attention.
Q. Do you know where the Meletaska Hotel is?
A. I do not remember.

Q. You do not know where the Meletaska Hotel is in Atlantic City?

A. No, I do not.

Q. You have never been there?

A. Not to my knowledge.

Q. You do not know anyone there?

113 A. Not to my knowledge.

Q. And you cannot say what month you were in Atlantic City, just before you bought that Cadillac car?

A. No sir.

Q. Did you stay in Philadelphia at a hotel?

A. No sir; I was going through.

Q. You were going from Atlantic City to New York, and stopped off at Philadelphia?

A. Yes.

Q. How long did you stay in Philadelphia?

A. A day; part of a day.

Q. Did anyone direct you to any automobile place?

A. No.

Q. How did you come to buy an automobile for your wife?

A. I did not buy it for my wife.

Q. Well, your wife bought it through you?

A. Well, I passed upon it, yes.

Q. It was your wife's money that bought the car; is that right?

A. Yes.

Q. And she paid for it with her check?

A. I do not know how she paid for it; whether it was check or cash. I could not say now.

Q. Is that the car that you have had ever since Lincoln's Birthday on these tours?

114 A. That is the car that she has always had. I never used it.

Q. What car did you have while you have been away?

A. I didn't have any.

Q. You didn't have any automobile?

A. No.

Q. Where did your wife meet you this morning with the car?

A. At 90th Street & Columbus Avenue?

Q. At what time was it?

A. I do not know the time.

Q. 8 o'clock, 9 o'clock, 10 o'clock?

A. Perhaps in between there, yes; I do not know exactly what time it was.

Q. Not before 8 o'clock?

A. Because I was a little detained in coming.

Q. Who were you in communication with just before you came here?

A. Before I came to New York?

Q. Yes.

A. With no one.

Q. Who knew that you would be at 90th Street & Columbus Avenue this morning?

Mr. Fallon: If your Honor please, how does he know what somebody else would know?

The Witness: Well, I do not know who they are, of course not. Perhaps everyone knew; I do not know.

Q. Who did you let know that you would be at 90th Street & Columbus Avenue?

A. I let my wife know.

115 Q. How?

A. By sending her a note.

Q. When did you send it?

A. I sent it early in the morning, to the theatre.

Q. What time?

A. It must have been—well, I sent it quite early. It was to be delivered to her at the exit of the theatre.

Q. What time did you send it?

A. Early in the morning.

Q. What time; 1 o'clock, 2 o'clock.

A. It might have been before that.

Q. By whom did you send it?

A. I cannot answer that on the ground that it may incriminate me.

The Commissioner: Mr. Arndtstein, the answer to that question cannot tend to incriminate you.

The Witness: I beg your pardon, sir.

Q. (Question read.)

Mr. Fallon: It might, your Honor.

The Witness: Yes, this question would, your Honor.

The Commissioner: No.

Mr. Fallon: It might involve someone—

The Commissioner (interrupting): That is too remote a possibility.

116 Mr. Fallon: If your Honor please, it might involve sending a messenger—

The Commissioner (interrupting): That is too remote.

Mr. Fallon: If your Honor will bear with me a minute: Suppose it should turn out that one of the Gluck boys was the messenger—

Mr. Myers (interrupting): He is in the Tombs.

Mr. Fallon: But suppose it turned out that he was turned out so that he could be there, or suppose it turned out to be some one of those named in this proceeding then could not it incriminate him?

The Commissioner: Too remote a possibility, Mr. Fallon. Answer the question, Mr. Arndtstein.

The Witness: Your Honor, really, I cannot answer the question.

The Commissioner: Yes you can too. That is too remote a possibility. Repeat the question.

Q. (Question read as follows:) By whom did you send it?

A. By a friend.

Q. What is his name?

A. I cannot answer, on the ground that it may incriminate me.

Mr. Myers: That is a new one in this Court.

117 The Commissioner: No; answer the question.

The Witness: Your Honor, really, I cannot answer that.

The Commissioner: Yes you can. You are directed to answer. Now go on.

The Witness: I cannot answer that, sir; I am very sorry; it may tend to incriminate me, and I am sorry, but I cannot answer it, in all due respect to you and the Court; I cannot answer it.

The Commissioner: Next question, Mr. Myers.

The Witness: I cannot answer it, sir.

Q. What was in the message?

A. To meet me at 9:30 and to bring Mr. Fallon with her, at 90th Street & Columbus Avenue.

Q. How did you get to 90th Street & Columbus Avenue? With what kind of a conveyance?

A. I walked.

Q. From where?

A. From uptown.

Q. From where?

A. From the Bronx.

Q. From where?

A. I do not know what part. I was let out of the machine, and I just walked.

Q. That is what we are trying to find out. In whose machine?

A. I do not know. It was a taxi.

Q. Whose taxi?

A. I do not know.

118 The Commissioner: Where did you hire the taxi?

The Witness: On the street.

Q. Where?

A. I cannot answer, on the ground that it might incriminate me, sir.

The Commissioner: Hiring a taxi on the street cannot incriminate you, Mr. Arndtstein.

The Witness: Well, this section, sir, where it was hired, that might incriminate me, sir.

The Commissioner: No.

Q. Are there particular sections of the Bronx that have criminals?

A. Yes sir.

Q. What part of the Bronx?

A. I cannot answer, for that reason.

Mr. Fallon: Now your Honor, isn't that the silliest question that could be asked: "Are there particular sections of the Bronx that have criminals"? Are we trying to purify the Bronx?

Mr. Myers: Does your Honor rule that he must answer that question?

(Question read to the Commissioner.)

The Commissioner: What is your answer as to where you hired it?

The Witness: I do not know, sir; I cannot answer.

119 The Commissioner: Hiring a taxi cannot tend to incriminate or degrade you.

The Witness: Well, Mr. Myers is trying to get the spot, the location that I arrived in New York this morning; that may incriminate me, and that is the reason I cannot answer.

The Commissioner: No; a spot in New York cannot tend to incriminate you.

The Witness: Yes sir.

The Commissioner: No.

Mr. Fallon: Crimes do happen in New York as well as the Bronx.

The Commissioner: No; the spot that he came to New York is not going to tend to incriminate him.

Mr. Myers: Will your Honor instruct the witness to answer the question?

The Commissioner: Answer the question. Give the spot.

The Witness: I do not know what part of the Bronx, sir, I got out of that taxi.

The Commissioner: Where did you get in the taxi?

The Witness: I hired him on the street; I do not know what street, sir.

120 The Commissioner: What street was it?

The Witness: I am not familiar with the Bronx, sir.

Q. Did you get out of a train?

A. No sir.

Q. Out of a taxi?

A. Yes.

Q. Now, what taxis did you get in?

A. I hired them on the street.

Q. No; you came in a taxi, and got off in the Bronx, and took up a taxicab, didn't you?

A. I just said I hired a taxi in the Bronx.

Q. Did you come to New York in an automobile, get out in the Bronx, and hire a taxi?

A. That is a different question.

Q. Yes?

A. Well, I cannot answer that, on the ground it may incriminate me, sir.

The Commissioner: No; coming into the City of New York in a taxi will not incriminate you any more than it would be.

Mr. Fallon: Under these circumstances it may be held to do so.

The Commissioner: No; you are anticipating something, Mr. Fallon.

Mr. Fallon: No; I am not anticipating. Here is a man that has been under indictment for several months. The manner of his return clearly might in some manner indicate something that had to do with that indictment.

121 The Commissioner: Too remote, Mr. Fallon.

Mr. Fallon: After all, the witness is the judge of the remoteness of a question of this kind.

The Commissioner: No; there is reason in all thing, Mr. Fallon.

Mr. Fallon: I know; but the witness is the solitary judge——

The Commissioner: No, he is not.

Mr. Fallon (continuing): —of the effect of a question that is propounded to him.

The Commissioner: No; he is not the solitary judge. He has the first say, and the Court the second say, and afterwards, and final. Now repeat the question and get an answer.

Q. (Question read as follows:) Did you come to New York in an automobile, get out in the Bronx, and hire a taxi?

Mr. Fallon: Yes or no, Mr. Arndstein.

The Witness: Yes sir.

Q. Whose automobile?

A. I do not know.

Q. Who came with you?

A. Myself.

122 Q. (Question repeated.)

A. No one.

Q. Were you driving it.

A. No sir.

Q. Who was driving it?

A. The driver.

Q. Who is he?

A. I do not know.

Q. Where did you get him?

A. I cannot answer that.

Q. Where did you get that car?

The Commissioner: Was he a hired Chauffeur?

The Witness: Yes sir.

The Commissioner: Or a private machine?

Q. Where did you get the machine; what city?

A. He was hired.

Q. What city did you get the machine?

A. I cannot answer, on the ground it may incriminate me.

Mr. Myers: Does your Honor direct the witness to answer the question?

The Commissioner: No; answer the question. The fact you came from Yonkers or Bridgeport, Connecticut, or any other place, cannot tend to incriminate you.

The Witness: I cannot answer, sir.

Mr. Fallon: It may, your Honor.

The Commissioner: No.

Mr. Fallon: It very well might. I do not want to be contentious, or advise this witness to go against your Honor's rulings, but I can very well see where this question might have bearing upon this indictment.

Mr. Myers: It might incriminate someone else, but not this bankrupt.

Mr. Fallon: Really, what you know about somebody else is quite beyond me. But if you admit that somebody else may be incriminated, that is connecting the two, perhaps, such as to reflect against this man. There again is the very best reason why he has the right to claim his privilege. My friend, every time he argues, offers the very thing we are looking for to establish our contention. He says it may reflect upon somebody else. If that somebody else had this transaction with this man, it may reflect upon him. That is just the reason he objects to it.

Mr. Myers: Will your Honor direct that the witness answer that question?

The Commissioner: Repeat the question.

The Witness: Your Honor, I cannot answer that question.

The Commissioner: What is the question you refuse to answer, do you know?

The Witness: The city that I hired the automobile in.

124 The Commissioner: Next question, Mr. Myers.

Q. Where did you get into that first automobile?

A. I cannot answer that, on the same ground.

Q. Do you refuse to answer that question?

A. Well, I cannot answer, on the ground it may tend to incriminate me.

Q. So you refuse to answer each and every one of these questions which you say you cannot answer; you mean you refuse to answer them?

A. I say I cannot answer them, on the ground they may incriminate me.

Q. Do you refuse to answer, when you say you cannot answer them?

Mr. Myers: I ask your Honor to inquire whether he refuses to answer.

The Commissioner: Do you refuse to answer those questions?

The Witness: Yes sir, I refuse to answer.

Q. With reference to every one of those questions to which you said you cannot answer; is that right?

A. Yes sir.

Q. Instead of saying you cannot answer, you now say you refuse to answer?

A. Yes sir.

125 Q. And you refuse to answer, upon the ground that in your opinion the answers might tend to incriminate or degrade you?

A. Yes, that is it.

Q. And the only crime with which you have been charged, that you know of, is the crime of Grand Larceny; is that right?

A. That is all.

Q. Will you say where you were yesterday?

A. I cannot say.

Q Will you say?

A No, I won't, on the ground——

Q (Interrupting.) How?

A I won't say.

Q Why not?

A On the ground it may incriminate me.

Q You refuse to answer that question, on the ground the answer may tend to incriminate and degrade you?

A Yes.

Mr. Myers: Will your Honor instruct the witness to answer that question?

The Commissioner: Answer the question, Mr. Arndtstein.

The Witness: I cannot say where I was yesterday, sir.

The Commissioner: Why not?

The Witness: It may incriminate me, sir.

The Commissioner: You are directed to answer the question.

126 Mr. Fallon: Now, it must appear to your Honor, if this man——

The Commissioner (interrupting): There is no necessity for further argument, Mr. Fallon. I have directed the witness to answer, and he has refused.

Mr. Myers: I now ask you to adjudge this witness in contempt of Court for refusal to answer.

The Commissioner: No; I will certify him, and you can appear before Judge Knox.

Mr. Myers: I ask that you issue a certificate, certifying this witness in contempt of Court for refusing to answer after being directed to by your Honor.

The Commissioner: You can take him over to Judge Knox.

Q Where did you go to when you left New York February 10th or 11th this year?

A I refuse to answer, on the same ground.

Q Where have you been since February 10th of this year?

A I refuse to answer, on the same ground.

Q In how many different cities have you been since the 10th of February this year?

A I refuse to answer, on the same ground.

127 Q What persons did you talk with since the 10th of February this year?

A I refuse to answer, on the same ground.

Q What banks, trust companies, safe deposit companies, or brokers have you visited since the 10th of February this year?

A I refuse to answer, on the same ground.

Q How often have you seen Nick Cohen since the 10th of February this year?

A I refuse to answer, on the same ground.

Q How often have you seen Phil. Kastel since the 10th of February this year?

A I refuse to answer, on the same ground.

Q. How often have you seen Charles Druckker since the 10th of February this year?

A. I refuse to answer, on the same ground.

Q. How often have you seen Ed. Strong since the 10th of February this year?

A. I refuse to answer, on the same ground.

Q. Well, do you refuse to answer all these questions?

A. Yes sir.

Q. And your sole ground is that the answers may tend to degrade and incriminate you?

A. Yes sir.

Q. Did you telephone to anyone to-day?

A. I refuse to answer, on the same ground.

128 Q. Did you telephone to anyone yesterday?

A. I refuse to answer, on the same ground.

Q. Have you made any statement about your affairs to anyone in the past six months?

A. I refuse to answer, on the same ground.

Q. Have you authorized any such statement?

A. I refuse to answer, on the same ground.

Q. Do you know any brokers in New York City?

A. I refuse to answer, on the same ground; it may incriminate me.

Q. Do you know any brokers in any other city?

A. I refuse to answer, on the same ground.

Q. Have you ever authorized anybody to buy or sell any shares of stock for you?

A. I refuse to answer, on the same ground.

Q. Have you ever authorized anybody to buy or sell any bonds for you?

A. I refuse to answer, on the same ground.

Q. Have you ever borrowed any money in the past year?

A. I refuse to answer, on the same ground.

Q. Have you loaned any money in the past year?

A. I refuse to answer, on the same ground.

129 Q. Have you handled any money or any property of any nature, kind or description, in the last six months, excepting the \$500 which you have testified you received from your wife in February of this year, just before you left New York?

A. I refuse to answer, on the same ground.

Q. Did you meet the Gondorfs at Atlantic City?

A. I refuse to answer, on the same ground.

Q. Did you visit them in Atlantic City?

A. I refuse to answer, on the same ground.

Q. Do you know Randolph Newman, the lawyer?

A. I refuse to answer, on the same ground.

Q. Have you access to any safety deposit boxes?

The Commissioner: Just a minute, Mr. Arndtstein. Just repeat the question before that.

Q. (Question read as follows:) Do you know Randolph Newman, the lawyer?

The Commissioner: Will that tend to incriminate or degrade you, whether you know a member of the Bar of the State of New York?

Mr. Fallon: Well, there were some very harsh things said about that gentleman, all of which were without any justification, however.

The Commissioner: I am asking him the question: Whether that would tend to incriminate or degrade him.

130 The Witness: I cannot answer that, your Honor.

The Commissioner: I am asking you whether the fact that you know Randolph Newman, a member of the Bar of this State, would tend to incriminate or degrade you.

The Witness: It might incriminate me.

The Commissioner: Randolph Newman, a member of the Bar of this State, the fact that you know him will tend to incriminate you?

The Witness: Things I have read in the papers and so forth, make me feel that it may incriminate me.

The Commissioner: All right.

Q. Do you know O'Brien, the clerk at the Hotel Claridge?

A. I cannot answer, on the same ground.

Q. Do you refuse to answer?

A. Yes; on the same ground.

Q. Do you know Mr. Washer, who has a cafe at 86th Street & Broadway?

A. I refuse to answer, on the same ground.

Q. Didn't you make a statement this morning when you arrived in New York, about your affairs?

A. I refuse to answer, on the same ground.

Mr. Myers: Does your Honor order him to answer? A statement about his affairs this morning, your Honor; a voluntary statement.

131 The Commissioner: What is the answer?

Mr. Myers: He refuses to answer.

The Commissioner: On what ground do you refuse to answer, Mr. Arndtstein?

The Witness: I beg pardon, sir?

The Commissioner: On what ground do you refuse to answer that question?

The Witness: That it may incriminate me, sir.

The Commissioner: To whom did you make this statement?

Mr. Fallon: That also might incriminate him, your Honor.

The Commissioner: Oh no.

Mr. Fallon: Well, suppose a statement made to somebody this morning contained an admission? Might that not incriminate him?

The Commissioner: It may be a statement to his counsel. That is what I am asking.

Mr. Fallon: Certainly. Then for another reason it would not be admissible. It may be a privileged communication. That could not be gone into, at all.

The Commissioner: If it is a statement to his counsel, all
132 right. But some third person, no.

Mr. Fallon: Suppose he did make a statement. That
statement contained admissions. Is he to be catechised here? Cer-
tainly that might incriminate him.

The Commissioner: He is asked the question whether he made
a statement of any kind. The fact that he made a statement is not
going to tend to incriminate him. Maybe the statement would.
Answer the question as to whether you made a statement or not.
That cannot possibly incriminate or degrade you; whether you made
any statement.

The Witness: Yes sir, I made a statement.

Q. Who did you meet at 90th Street & Columbus Avenue this
morning?

A. My wife.

Q. Who else?

A. Mr. Fallon.

Q. Who else was with you when you met them?

A. No one.

Q. How?

A. No one.

Q. Well, who was with you just before you met your wife and
Mr. Fallon?

A. I refuse to answer, on the ground it may incriminate me.

Mr. Myers: Do you direct the witness to answer?

The Commissioner: No; if he refuses to answer that, let
133 it stand.

Q. Who joined you afterwards?

A. I do not know; a reporter was on the taxi, or car.

Q. Who was he?

A. I do not know his name.

Q. What newspaper?

A. I could not say, sir.

Q. You do not know his name?

A. No sir.

Q. Who introduced you to him?

A. He was not introduced.

Q. You made a statement to him, didn't you, about your affairs?

A. Not about my affairs.

Q. How?

A. No sir.

Q. Didn't you talk about yourself and Nick Cohen?

A. I certainly did not.

Q. What did you talk about?

Mr. Fallon: We object, if your Honor please. How can that be
material here, something he said at another time?

Mr. Myers: He may have said where his property was; I do not
know.

Mr. Fallon: Yes; he may have said a lot of things. And if he did say that, that is why he can refuse to answer.

The Commissioner: State if he had any conversation; state what the conversation was.

134 Q. Did you have any conversation with that reporter?

A. Yes.

Q. What was it?

A. I just told him that I came to give myself up, to surrender. That I have been trying to do so for the past three months, but that you were obstructing every passage that I tried to make, in regard to the bond; that you would not permit me to come in for some reason or other. That is all I said to him.

Q. That is all you said?

A. Yes sir.

Q. Where did you get the information that your return to the city was being obstructed?

A. From the newspapers.

Q. Only from the newspapers?

A. Yes.

Q. From no other source?

A. Because—

Q. (Interrupting.) From any other source?

A. I refuse to answer, on the ground it may incriminate me.

The Commissioner: No; answer the question.

(No response.)

Q. Did you get it from any other source?

Mr. Fallon: May we not stand upon the refusal, your Honor, and your Honor's direction?

The Commissioner: No; that is not going to tend to incriminate or degrade him.

135 Mr. Fallon: It might, your Honor, very well.

The Commissioner: No. Answer the question. If you appreciate what the question is, Mr. Fallon, you will understand it is not hurtful.

The Witness: Your Honor, I cannot answer that question, with all due respect to you.

The Commissioner: No. Repeat the question. Perhaps Mr. Fallon did not understand the question.

Mr. Fallon: May we have the question read?

The Commissioner: Do you understand the question?

Mr. Fallon: I say, I would like it to be read.

The Commissioner: Do you understand it?

Mr. Fallon: I would like to have it read. May we not have it read so that we will meet on a common ground?

Q. (Question read as follows:) Did you get it from any other source?

Mr. Fallon: Isn't it possible, your Honor, that that may tend to incriminate him?

The Commissioner: Either yes or no; that cannot incriminate him.

Mr. Fallon: If he can answer that yes or no: From whom he got any information. If he can answer that yes or no, we do not object.

136 The Commissioner: He asked him if he got it from any other source.

The Witness: Yes sir.

Q. What other source?

A. I cannot answer that, on the ground it may incriminate me.

Q. Did you get it from Mr. Fallon?

A. The first time I have seen Mr. Fallon in my life, was to-day.

Q. When was the first time you heard from him? Didn't you hear from Mr. Fallon while you were away from New York?

A. No sir, I did not.

Q. Did you hear from Mr. McGee?

A. Yes sir.

Q. How often?

A. Once, at the Winton Hotel.

The Commissioner: Mr. Myers, I might state, for your information that Judge Knox will be at his Chambers until 5 o'clock. It is now ten minutes of five.

Mr. Myers: I want to ask one question.

Q. I want to know exactly what you stated to the reporter this morning about your affairs. Will you answer that question?

A. Yes sir.

Q. What did you tell the reporter this morning when you got in New York?

A. About my affairs? Nothing.

Q. Yes?

A. Nothing.

Q. What did you tell him? State the conversation.

137 The Commissioner: As near as you can, Mr. Arndtstein.

The Witness: That I had great difficulty in arriving here; that I came in to surrender; and that I had been trying to do so for the past three months, but it seemed that all the possible ways were blocked against me; but that I had difficulty in coming in this morning; and I declared that I was glad I came here. I was anxious to come in.

Q. Is that all you said?

A. I may have said one or two other little things, that I do not remember.

Q. What is your recollection as to what else you said?

A. That is all; because that was the main thing in my mind.

Q. Did you tell that reporter where you were; where you had been?

A. No.

Q. You told him nothing about that?

A. No sir.

Q. You did not tell him where you came from?

A. No sir.

Q. Did you tell anyone where you had been?

A. No sir.

Q. Did you tell your wife?

A. No sir.

Q. Or Mr. Fallon?

A. No sir.

Q. They do not know, so far as you know?

A. No sir; nobody knows.

138 (At this point counsel, the witness, and the stenographer appeared before Judge John C. Knox in open Court in the Woolworth Building.)

After hearing argument by Mr. Bacon, of counsel for the Trustee, and Mr. Fallon, for the bankrupt, the Court directed that the record be transcribed and submitted to him to-morrow (Sunday).

That motions for punishment for contempt be submitted Monday.

That in the meantime, the bankrupt be held in \$25,000 bail.

Decision reserved.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

Adjourned.

Special Commissioner's certificate attached.

U. S. District Court, S. D. of N. Y. Filed Jun. 1, 1920.

139 In the Matter of NICHOLAS ARNSTEIN.

New York, May 18th, 1920.

Hearing resumed.

Present:

The Commissioner (Mr. Tallman).

Mr. Myers.

Mr. Fallon.

Mr. Arndtstein, the Bankrupt.

Mr. Myers: If your Honor please, Judge Knox ruled yesterday afternoon that the witness would have to answer all questions put to him in this proceeding, unless that he could show that the answer would tend to incriminate him in reference to a possible violation of some Federal Statute. In the absence of such a showing, the witness shall be compelled to answer every question as to his assets.

Mr. Fallon: If your Honor please, Judge Knox did not say that the defendant had to show anything, nor did he put himself on

record with any such assertion as that. All he did do, legally, was to dismiss the contempt proceeding because the papers were insufficient and irregular. Beyond that he had no jurisdiction. When the proceeding was dismissed, that terminated the authority of Judge Knox to make any direction. He did say, however, that wherever it might appear, or wherever the defendant claimed his privilege, that it was the privilege against crimination by reason of a Federal Statute. But he did not say that this man had to show, or that he could not claim his privilege generally on that ground.

The Commissioner: The matter is up to the Commission in the final analysis, whether it will tend to incriminate or degrade him.

Mr. Fallon: Certainly. You are not bound by any direction made by any Court prior to that.

Mr. Myers: I say that the judge made the direction. As long as we have a dispute—

141 Mr. Fallon (interrupting): May we have the record read?

(Mr. Myers (continuing): —I ask that the Commissioner confer with the Judge, and we won't have any more dispute as to what the Judge said.

Mr. Fallon: May we just have the record read?

Mr. Myers: Will your Honor go and confer with Judge Knox and find out just what he ruled?

The Commissioner: Is the record here?

Mr. Fallon: There was a stenographer present.

Mr. Myers: The stenographer who took it, is taking a trial before Judge A. N. Hand. We have just sent in there to get the final ruling of the Judge. We have to wait until he gets through with taking down the summation of one of the attorneys. But in the meantime, your Honor could confer with Judge Knox and satisfy yourself that Judge Knox, from the Bench, directed what shall take place here to-day.

The Commissioner: There is this about it, Mr. Fallon: It is customary in these proceedings before the Commissioner, that when a question of this sort arises, for the attorneys to go before the Judge, and the Judge to make a general ruling for the benefit of the Commissioner.

142 Mr. Fallon: That happens only on consent. We are not consenting to anything of that kind.

The Commissioner: That was done yesterday, and the Judge did undoubtedly make some statement for the guidance of the Commissioner and the attorneys.

Mr. Fallon: He made a suggestion; that is all.

The Commissioner: That is what I would like to see.

Mr. Myers: We have sent for it; if you would rather wait, we will try to get it from the stenographer.

The Commissioner: The general observations he made in regard to the conduct of this proceeding.

Mr. Fallon: That is all. There was no question but what the man had the right to refuse to answer, where his answer might incriminate him so far as a Federal Statute was involved. Of course, we do not concede that is the law; but we still are entirely willing to accept that decision, because, for our purposes, it is entirely satisfactory,

The Commissioner: With that general proposition to start in with, now proceed with the examination.

143 JULES ARNDTSTEIN, being first duly sworn by Commissioner Tallman, testified as follows:

Examined by Mr. Myers:

Q. By what other names have you been known besides Jules Arndtstein?

A. I refuse to answer, on the ground that it may incriminate me.

Mr. Myers: I ask your Honor to direct the witness to answer.

The Commissioner: There you have it right at the very inception. I can see conditions arising where the admission that he has been known under different names might tend to incriminate or degrade him.

Mr. Myers: It is not sufficient that it would incriminate him. The only question is whether it would incriminate him in reference to the possible violation of some Federal Statute. Now, what is the Federal Statute that he objects on?

Mr. Fallon: By even concealing assets, under the Bankruptcy Law. What more does he want than that?

Mr. Myers: The witness does not claim that.

Mr. Fallon: He does not have to.

Mr. Myers: That is the personal privilege of the witness; it is not the privilege of counsel.

144 Q. Now do you claim that your answer might tend to incriminate you in reference to possible concealment of assets?

Mr. Fallon: We do not need to go any further than we have gone. We do not have to explain under what Statute we claim our privilege. All we do is claim our privilege.

Mr. Myers: That is directly contrary to what Judge Knox ruled yesterday.

Mr. Fallon: Then certify us for contempt, and let us go back and have the matter thrashed out.

Mr. Myers: We thought you wanted a speedy trial.

Mr. Fallon: You have nothing to do with that. You are not the prosecutor; you are only the bankruptcy lawyer. My friend always likes to talk about everything except this matter; he always does that; circumlocution is his middle name.

Mr. Myers: Why don't you have your client tell his story in his own way? That is the whole thing here.

Mr. Fallon: If he were your client, he would probably do that.

Mr. Myers: He would clear himself with the Public.

Mr. Fallon: No, if your Honor please, we ask for

145 a ruling, without all this unnecessary harassing.

The Commissioner: I think I should sustain the objection.

Q. Where did you go on February 10th of this year?

A. I cannot answer, for the same reason: It may incriminate me.

Q. Do you refuse to answer?

A. I refuse to answer, for the same reason.

Q. On the ground that the answer might tend to incriminate you?

A. Yes sir.

Q. In reference to the possible violation of a Federal Statute?

A. Yes sir.

Q. Now, what Federal Statute do you claim that you might possibly be indicted for violating?

A. I refuse to answer that.

Mr. Fallon: That is a question of law.

Mr. Myers: I ask that he be directed to answer.

Mr. Fallon: That is a question of law too, Mr. Commissioner. Now here is a man being asked the question, after he has claimed his privilege, whether or not the answer to that question may bring him in conflict with a Federal Statute; that is clearly a question of law.

We do not ask lay witnesses the law.

146 The Commissioner: What was that date; February 17th?

Mr. Myers: February 10th.

The Commissioner: When was the petition filed?

Mr. Myers: February 20th.

Mr. Fallon: Your Honor, if he went out of the jurisdiction, undoubtedly that might be a situation which would admit of the possibility of his concealing assets. Nothing could be clearer than that.

Mr. Myers: If he tells the truth here, he cannot be held for concealing assets. That is the proposition. He cannot first conceal a lot of money, and then refuse to answer on the ground that the answers would tend to incriminate him in reference to that very concealment. That would be a very fine proposition: A man could go out and steal a million dollars, and then say: "I refuse to answer, because if I answer you would be able to hold me for concealing the assets." That is new law.

Mr. Fallon: May we have a ruling?

The Commissioner: I will sustain that objection.

Q. Where have you been since the time of the filing of the petition in bankruptcy in this case?

A. I cannot answer, for the same reason.

147 Q. Well, do you refuse to answer?

A. I refuse to answer, for the same reason.

Q. On the ground that the answer would tend to incriminate you?

A. Yes sir.

Q. In reference to the possible violation of a Federal Statute?

A. Both.

Mr. Fallon: Both Federal and State?

The Witness: Both Federal and State.

Q. Do you know Nick Cohen?

A. I refuse to answer, for the same reason: As it may incriminate me.

The Commissioner: You are going too far here. I do not see that that question is material.

Mr. Fallon: Suppose it should develop in the course of this proceeding that it was alleged here that Cohen, acting in concert with

this man, had secreted assets of the bankrupt in this proceeding. Would not that bring him directly in conflict with a Federal Statute?

The Commissioner: Not the mere fact that he knew him. I do not see any objection to that.

Mr. Fallon: Oh yes.

The Commissioner: The transactions with Mr. Cohen, that would be a different proposition. But the fact that he merely knew him, I do not see any objection to that.

148 Mr. Fallon: That would be a circumstance. In other words, his knowing him might be a circumstance. Then we go one step further.

The Commissioner: That is pretty far fetched.

Mr. Fallon: I can appreciate your Honor's position, but of course, when this privilege is claimed, it is not with a view of whether or not the matter will actually incriminate, but it is whether this man, with his broad view of that which it may lead to, whether under those circumstances he is not justified in claiming his privilege; so that any incidental fact, no matter how small, which he says, as the best judge of course, and knows what has taken place, whether under those circumstances he is not justified in saying that particular fact, minor as it may appear, may become larger upon the question of the criminal prosecution that might follow in the wake of this proceeding. Because, you see, that is the correct rule of law.

The Commissioner: Well, we have always here ruled that the mere knowing a man does not mean anything one way or the other.

Mr. Fallon: Yes, that would be true ordinarily.

The Commissioner: That is our regular ruling here.

149 Mr. Fallon: And I say, ordinarily, that would be true; but under the peculiar circumstances in this case, no.

The Commissioner: Well, I should have to overrule the objection on that.

Mr. Fallon: We very respectfully except.

Q. (Question read as follows:) Do you know Nick Cohen?

Mr. Myers: Will you answer that?

A. Yes sir.

Mr. Fallon: No; you refuse to answer.

Mr. Myers: Well, he answered it "Yes." Now counsel tells him to refuse to answer.

Mr. Fallon: We regularly excepted, with all due deference, to your Honor's decision, and we stand upon the position that we refuse to answer because of the peculiar circumstances in this case; and while I am entirely in accord with your Honor's suggestion that in almost every other case a question of that kind is a question that a witness could answer without incriminating himself, because of the situation we have in this inquiry, it would tend to incriminate him.

The Commissioner: Well now, just make a record then, Mr. Myers, of all these refusals to answer, to submit to the Judge.

150 Mr. Myers: We did that last Saturday. We took a few hours, and 50 pages of testimony. We are not going all

through that again unless we are compelled to. I would like to have your Honor instruct Mr. Fallon that he ought to sit away from the witness; it is improper for him to tip the witness off and tell him how to answer. We were all through that last Saturday; I do not want to go through it again.

Mr. Fallon: I suppose my friend does not want this man to have the advantage here of counsel at all.

Mr. Myers: I think he will tell the truth if you will let him. I think he would like to tell the truth.

Mr. Fallon: I know you like to think what other people think, instead of thinking what you ought to think for yourself.

The Commissioner: This man is the bankrupt and he is here for examination. He is entitled to have counsel, and he is entitled to be right alongside of him.

Mr. Myers: The witness answered, and he then told him that he ought not to have answered.

Q. How long have you known Nick Cohen?

A. I cannot answer, for the same reason: That it may incriminate me.

The Commissioner: On that I will sustain the objection.

151 Q. When did you see him last?

A. I cannot answer that, for the same reason.

The Commissioner: Objection sustained.

Mr. Myers: I except to all these rulings. Will you put an exception to each one so that I won't have to repeat it each time?

Q. Did you ever receive any property of any kind from Nick Cohen?

A. I cannot answer that, for the same reason.

The Commissioner: What is that question?

(Question read.)

The Commissioner: I think I shall have to sustain that objection.

Q. Did you ever give any property of any kind, at any time, to Nick Cohen?

A. I cannot answer that, for the same reason.

The Commissioner: Same ruling.

Mr. Myers: Note an exception each time. I do not want to repeat it each time.

Mr. Fallon: Cannot we concede that both sides have exceptions to each ruling?

Mr. Myers: Yes.

152 Q. Have you ever had any correspondence with Nick Cohen since February 10th last?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Did you have any communication of any nature, kind or description with Nick Cohen since February 10th last?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Where does Nick Cohen live?

A. I cannot answer, for the same reason.

The Commissioner: I think that question is unobjectionable. You can well answer that, if you know.

Mr. Fallon: May we have the question read?

(Question read.)

The Commissioner: Do you know where Mr. Cohen lives?

Mr. Fallon: If you know.

The Witness: No sir.

The Commissioner: You do not know?

The Witness: No sir.

Q. Did you ever know?

A. I cannot answer that, for the same reason.

Mr. Fallon: Your Honor can see that that might very well involve a situation that would lead right into this case.

153 The Commissioner: Well, I think that is true. I sustain the objection.

Mr. Myers: Exception.

Q. Where did you see him last; in what city?

A. I cannot answer, for the same reason.

Same ruling and exception.

Q. Will you say whether you saw him this year?

A. I cannot answer, for the same reason.

Q. Or last year?

A. I cannot answer, for the same reason.

Q. Or the year before?

A. I cannot answer.

Q. Or the year before that?

A. I cannot answer, for the same reason.

Q. Have you seen him during the past five years?

A. I cannot answer, for the same reason.

The Commissioner: That is pretty—that is right on the border line.

Mr. Fallon: That is right on the border line, but he is the one who best knows whether it tends to incriminate. That is a question that we might argue that it may be on the border line; but not with the witness, who has the privilege of surveying the entire situation, to see for himself whether or not it will incriminate him.

154 The Commissioner: Well, I will give the witness the benefit of the doubt on that. Objection sustained.

Mr. Myers: Exception. Will you read the previous questions? There are several.

The Commissioner: They are all the same; I heard them. Same ruling.

Mr. Myers: Exception.

Q. Have you ever been in business with Nick Cohen?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Have you ever had any business transactions with him of any nature, kind or description?

A. I cannot answer that, for the same reason.

The Commissioner: Well, I think that question is proper.

Mr. Fallon: That may be one of the transactions involved here.

The Commissioner: I know; but until we get down to something further, I think that is going a little too far, to say that is not a proper question.

Mr. Fallon: But, your Honor, suppose he never had a transaction with Nick Cohen?

The Commissioner: All right; let him say so.

155 Mr. Fallon: And he testifies generally, no. But then, there might be circumstances which would seem to indicate that they had taken place; that he had transactions with Cohen. Now the mere fact that he goes on record making a denial, means a circumstance which might even put the rest in dispute, even though his denial is proper, it gives him the right to say that he won't answer that question. It is not whether or not the isolated fact amounts to anything. It is whether that fact, in conjunction with other possible circumstances which may appear in this case, or will on any other case in the Federal Court, whether or not all of those circumstances added one to the other, might make a chain of circumstances from which something would develop.

The Commissioner: Well, you can carry that argument on until it becomes perfectly ridiculous.

Mr. Fallon: Of course you can.

Q. (Question read as follows:) Have you ever had any business transactions with him of any nature, kind or description?

The Commissioner: I really think that question ought to be answered.

Mr. Fallon: May we very respectfully except?

156 The Commissioner: All right.

Mr. Fallon: We must decline to answer, with all due deference.

Q. What have been the nature of your dealings with Nick Cohen?

A. I cannot answer, for the same reason.

Q. What dealings have you had with Nick Cohen during the past year?

A. I cannot answer, for the same reason.

The Commissioner: Consider it the same ruling on all these.

Mr. Fallon: Well, they have not asked for direction that he answer any of these. They have gone along without asking for a ruling. Under the circumstances, there is no direction.

Mr. Myers: We will ask for it now. I ask that the witness be directed to answer each of those questions.

The Commissioner: Consider the objection sustained unless I rule that they be answered.

Mr. Fallon: I see. I thank you.

The Commissioner: Continue on just the same way it has been going.

Q. Do you remember going to Washington, D. C. with Nick Cohen on or about October 12th last?

A. I cannot answer for the same reason.

157 Q. Do you remember meeting Joe Gluck and going with him at the same time?

A. I cannot answer, for the same reason.

Q. Do you remember meeting David Sullivan in the Pennsylvania Station at the same time?

A. I cannot answer, for the same reason.

The Commissioner: Same ruling.

Mr. Myers: All these are sustained?

The Commissioner: I sustain the objections.

Q. Do you remember meeting David Sullivan in Washington, D. C. on or about October 13th last?

A. I cannot answer, for the same reason.

The Commissioner: What is that question?

(Question read.)

The Commissioner: Same ruling.

Mr. Myers: Exception.

Q. Do you remember receiving a satchel full of stolen securities from Joe Gluck in the Pennsylvania Station on October 12th last?

A. I cannot answer, for the same reason.

Q. You do not deny that?

A. I cannot answer, for the same reason.

158 Q. Do you deny that you and Joe Gluck and Nick Cohen proceeded to Washington or or about October 12th last, with a satchel full of stolen securities, to your knowledge?

Mr. Fallon: If your Honor please, should not Mr. Myers be directed to formulate his questions in the affirmative form, as they always should be formulated upon the direct inquiry, and not to put them in the negative. You cannot ask a man does he deny a particular thing, without asking him first the question which calls for the fact; then that gives him the right to refuse to answer. That is the proper method of inquiry.

Mr. Myers: I suppose if a man steals enough, every safeguard will be thrown around him. He ought to steal one hundred millions, then he would not be brought into Court at all.

Mr. Fallon: Everything except that which is at hand, my friend likes to talk about.

The Commissioner: There is no use going into personalities. Just get right down to business. I do not think those questions are quite proper, Mr. Myers. Just reframe them a little bit.

Q. Do you remember receiving some money from Nick Cohen in Washington, D. C. on or about October 13th last?

A. I cannot answer, for the same reason.

159 Q. Did you go to Boston with Joe Gluck and Nick Cohen in October last?

A. I cannot answer, for the same reason.

Q. Did you go to Baltimore, Maryland with Joe Gluck and Nick Cohen in October last?

A. I cannot answer, for the same reason.

Q. Did you go to Philadelphia with Joe Gluck and Nick Cohen in October last?

A. I cannot answer, for the same reason.

Q. Did you receive any securities of any nature, kind or description from Joe Gluck or Nick Cohen in any of those cities, in October and November last?

A. I cannot answer, for the same reason.

Q. Whom did you meet in Washington, D. C. in October last?

A. I cannot answer, for the same reason.

Mr. Myers: Are all of those sustained?

The Commissioner: Yes, they are.

Q. Whom did you meet in Boston in October and November last?

A. I cannot answer, for the same reason.

Q. Whom did you meet in Philadelphia and Baltimore in October and November last?

A. I cannot answer, for the same reason.

160 Q. Whom did you meet in Hoboken, New Jersey in October and November last?

A. I cannot answer, for the same reason.

Q. Did you visit any banks, trust companies, or safe deposit companies in October, November or December last, or any time this year?

A. I cannot answer, for the same reason.

Q. Do you know Joseph Gluck?

A. I cannot answer for the same reason.

Q. Do you know Irving Gluck?

A. I cannot answer, for the same reason.

Q. Do you know Charles Druckker?

A. I cannot answer, for the same reason.

Q. Do you know Eddie Winkler?

A. I cannot answer, for the same reason. I answered all these questions Saturday.

The Commissioner: Are you waiting for me?

Mr. Myers: I suppose you are sustaining all these. I am going right ahead.

The Commissioner: No; I do not want to do that.

Mr. Fallon: We thought your Honor was engaged. I presume that was the reason.

The Commissioner: Are you waiting for me now?

Mr. Myers: Yes sir.

161 The Commissioner: Is there a ruling required?

Mr. Myers: There is a question.

The Commissioner: What is the question?

(Last few questions and answers read.)

The Commissioner: Those questions are in the same class as the question that was asked in the first place, about Nick Cohen. I do not think that his merely knowing a person will tend to incriminate or degrade him.

Mr. Fallon: Here is the peculiar situation, your Honor. It is not the one man or the two men. But here are a number of men: The Glucks, Winkler, Druckker, and all these various names we hear so much about. If this man says he is acquainted with all these people, that is a circumstance which would very well argue to a conclusion in this case. In other words, the mere acquaintance with these men is an argument against this defendant, if he were to admit that he knows these men; and in that way, we say it is not that he refuses to answer regarding one name, but that the peculiar circumstances in this case entitle him to say that he won't answer whether or not he knows these people; because knowing these people of itself, to which something else might be added, would form a circumstance in this link upon which Federal prosecution might
162 be brought. And it is in this way that we suggest that these questions, in this case, differ from the same questions in other

CASES.
The Commissioner: I am inclined to think that is so, Mr. Myers.

Mr. Myers: Then there would be no use asking any questions—

The Commissioner: I would also think that were the case right now.

Mr. Myers: Don't you think you had better confer with Judge Knox? Because your rulings are in direct conflict with those of the Judge.

Mr. Fallon: Your rulings are not in conflict with Judge Knox at all; and that should not be allowed to be said. Judge Knox said that nothing that might come in conflict with a Federal Statute, passing over for the time being, the State indictment. He said anything of that sort of course, he could refuse to answer. That is as far as Judge Knox went. So far as that goes, your Honor is the judge here, and we are entirely willing to follow the Federal Judge; but let it be the United States Supreme Court Judge, if we are going to follow somebody. There are decisions sustaining your Honor upon this position.

163 Mr. Myers: I suggest that your Honor confer with Judge Knox. I have made that suggestion two or three times; I repeat it now, and say that the ruling are in direct conflict with Judge Knox. I do not think your Honor wants to take that position.

The Commissioner: You go right ahead with your examination a little while longer.

Mr. Myers: Well, I think we are wasting time, so far as things have gone.

The Commissioner: I think you are. I do not mean that as any reflection upon you. But you are not making much progress here, up to the present time, the questions that are being asked, and the peculiar situation here. If you like, I will try to see Judge Knox, if you want to suspend for a few minutes, and resume again later in the afternoon.

Mr. Fallon: Now, if your Honor please, I have cases in almost every Court, and if there is any question of adjournment, may we not adjourn until some other day? Because we will be around here asking these questions, with the same rulings, in the purposeless sort of fashion, for hours. Can we not adjourn this then until another day?

164 Mr. Myers: I object to any adjournment.

Mr. Fallon: Then let us go on.

Mr. Myers: We are going on with this examination. This matter was frustrated last Saturday by this witness refusing to answer. We went before Judge Knox, and he gave his instructions, and I don't care what anyone says, I say that Judge Knox instructed this witness what he must answer; not what he feels like answering; and I refer your Honor to Judge Knox. And if it is to be adjourned, it ought to be adjourned for a couple of hours at the outside. This man is not going to escape answering these questions in bankruptcy, by any technicalities.

Mr. Fallon: Well, my friend can take it for granted right now that he is not going to answer them.

Mr. Myers: We will find out about that.

The Commissioner: Here is what I will do: We will just carry this over until half past 12. I will see Judge Knox in the meantime. Unfortunately, I have been brought into this case at the last moment, without knowing what had gone before; I was not present at the hearing before Judge Knox yesterday; I was not present on Saturday; and I do not know what Judge Knox has ruled in the matter. All I know is the regular existing practice here in such matters, and the ordinary ruling. If Judge

165 Knox has made some rulings in the matter which are material to this examination, I think I ought to know more about what they are before we go ahead.

Mr. Fallon: May not counsel attend with your Honor before Judge Knox?

The Commissioner: Certainly.

Mr. Fallon: So that we can arrive at a conclusion before him.

The Commissioner: Yes.

Mr. Myers: Shall we say then one o'clock?

The Commissioner: Well, one o'clock we all adjourn here for lunch.

Mr. Myers: 1:30 or 2 o'clock.

The Commissioner: Judge Knox is engaged downstairs in Naturalization now. He will be, probably, until one o'clock.

Mr. Myers: He said he would not see anyone until one o'clock. He would probably see you, but I do not think he would see counsel until one o'clock.

Mr. Fallon: Well, may we not have it arranged—I presume Judge Knox will want to take his lunch after the conclusion of his work at one o'clock—in suiting his convenience as near as we can then, may we not go to his Chambers at 2 o'clock? Then we can have this matter discussed with him.

The Commissioner: I should say you had better make it about a quarter past two at Judge Knox' Chambers.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

Adjourned to 2:15 p. m. this date, at the Chambers of Judge Knox in the Woolworth Building.

167 In the Matter of NICHOLAS ARNSTEIN.

New York, May 18th, 1920—(2.15 p. m.)

Commissioner Tallman, Counsel, and the stenographer appeared before the Honorable John C. Knox in his Chambers at the Woolworth Building.

After hearing argument by Mr. Myers and Mr. Fallon, and statement by Commissioner Tallman, the Court gave the following instructions:

The Court: Let the examination proceed before the Commissioner; let him exercise his judgment. After he exercises it, and directs the witness to answer those questions which he may deem proper, then I will pass judgment upon whether or not the Commissioner was in error or right. If he was right, and I think he is, I will direct him to answer. If he does not do so, I will commit him. You can make your record and submit it to me, and then if you want to be heard I will hear you.

(The examination was thereupon resumed before Commissioner Tallman in his office in the Post Office Building as follows:)

JULES ARNDSTEIN, recalled.

Examined by Mr. Myers:

Q. Have you any money in your possession or under your control?

A. I cannot answer that, on the ground it may incriminate me.

The Commissioner: That is quite a proper question. There is nothing wrong about that. That cannot tend to incriminate you or degrade you, that I can see.

A. Yes, I have.

Q. How much?

Mr. Fallon: Now, if your Honor please, we object to how much, because that may involve one of those situations that we have discussed so fully. We have answered that first question, in accordance with your Honor's direction: That he has property. But how much, leads into the consideration of what it might be.

The Commissioner: This man is the bankrupt; he is being asked now about property; property in his possession; property that
169 his creditors may lay claim to.

Mr. Fallon: And which it may be contended he is concealing.

The Commissioner: We are not asking about the source of the property. We are asking what property he has. There is nothing improper in that at all.

Mr. Fallon: But to disclose, your Honor, what property he has, might lead to the disclosure of the sources of the property, or the fact that that property is being concealed. So, to tell what it is leads them into a position where they can make research into what he has. That is precisely the situation we went over with Judge Knox: Where he said these facts might enable other people to build upon these facts, and bring out something against this man. Now that is exactly Judge Knox' line of demarcation. He says, not any single thing can be picked up and carried further; that this man has the right to decline to answer. Now that undoubtedly is the situation here; and we do not want to answer contrary to your Honor's direction, but I think you must see that that point is well taken.

The Commissioner: I do not agree with you on that. I should direct him to answer that question.

Mr. Fallon: May we very respectfully except?
170 The Commissioner: Yes.

Q. (Question read as follows:) How much money have you in your possession or under your control?

A. I cannot answer that, on the ground that it may incriminate me.

Mr. Myers: I ask your Honor to direct the witness to answer.

The Commissioner: I do so direct.

Q. Do you still refuse to answer?

A. Yes sir; on the same ground, with all due respect.

Mr. Myers: I ask your Honor to certify the witness as in contempt.

The Commissioner: I will certify the question to the Court in due course.

Mr. Myers: Does your Honor hold that he is in contempt?

The Commissioner: That is not for me to hold, Mr. Myers.

Mr. Myers: Do you certify the contempt?

The Commissioner: I certify at the end of the proceeding. I certify the whole record.

Mr. Myers: Under the law, you have to certify that the witness is in contempt for refusing to answer. Then our certificate is all ready. That is the practice.

171 Mr. Fallon: The understanding was that we were to make the record, and then your Honor would make what certification you saw fit to make, upon the record, and we would straighten that all out.

Mr. Myers: We can take the form of certificate up later then.

Q. Where did you get the money?

A. I cannot say, for the same reason.

Mr. Myers: Does your Honor make the same direction?

The Commissioner: No. I sustain that objection.

Q. When did you get it?

A. I cannot say, for the same reason.

Same ruling and exception.

Q. Did you get it this year?

A. I cannot say, for the same reason.

The Commissioner: I think that question is all right. I do not see anything objectionable. I think that should be answered.

Mr. Fallon: May I have the question read?

(Question read.)

Mr. Fallon: The money he got this year is money that might be traced to the sources that they claim the money could be traced to, which particular assets might be concealed in that transaction. Now that is precisely the matter that we went over with Judge Knox. What Judge Knox said: Things that antedated all this proceeding, might possibly be inquired into. But what money he has now, and where he got that money, clearly could lead to an accusation of concealing those particular assets. What he has is that which he might be charged with concealing. Now how can he be held to have to answer that? Cannot he see, within his judgment, that he might be charged with concealing those very things that he is now asked to disclose to possess?

The Commissioner: What is that question again?

(Question read.)

The Commissioner: The petition was filed when?

Mr. Myers: February 20th, 1920.

Mr. Fallon: And that Radin case that your Honor read shows that many things antedating that, long before the petition, can be considered within the category of self incrimination.

The Commissioner: I think I shall hold that question does come within the class of questions which the witness may refuse to answer on the ground that it may tend to incriminate and degrade him, if he wishes to claim that privilege.

173 Q. Did you receive the money last year?

A. I cannot say, for the same reason.

Mr. Fallon: Your Honor sees that is merely argument leading up to the same situation; it is the same series of questions. If one is objectionable so is the other. The argument is: If he did not get it this year, he got it last year; and if he didn't get it last year, he got it this year; therefore it is being concealed here.

The Commissioner: I think I will give the bankrupt the benefit of the doubt on that.

Mr. Myers: Exception.

Q. Did you receive it more than two years ago?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Did you receive it more than three years ago?

A. I cannot answer it, for the same reason.

The Commissioner: Mr. Fallon, there is a limit to this thing, you know.

Mr. Fallon: Yes, there is a limit, your Honor, but the point about it is, by bringing down this series of questions, it is an objectionable series of questions. If he does not have to answer if he got it this year, clearly he cannot, by inference, be held to answer the question he got it this year, that he got it last year; or if he did not get it three years ago, or he got it two years ago. In other words, each one of those questions is equally objectionable, and he does not have to disclose his assets. The question is absolutely meaningless. He said "When did you get it?" There is no "it" in this case. That is absolutely nonsensical. There is the series of questions. You cannot build up a series to do by indirection what you cannot do directly.

Mr. Myers: He testified he has certain moneys; he has admitted that. The question is: Where did he get the money, and when.

Mr. Fallon: That leads into the very property that might be part of this subject matter, and your Honor has already held he did not have to answer that. Now we just go back and forth and back and forth.

The Commissioner: I shall have to rule the same way on that.

Mr. Myers: Exception.

Q. Did you get it five years ago?

A. I cannot answer that, for the same reason.

175 The Commissioner: Mr. Myers, I do not know on what theory we can find the line of demarcation here, as to time.

Mr. Myers: Mr. Fallon is going to jealously guard the rights of his client; I am going to jealously guard the rights of mine; and you will have to be the umpire.

The Commissioner: You are back now four years, are you?

Mr. Fallon: Oh, we are back beyond that.

Mr. Myers: Five years.

Mr. Fallon: That can have no bearing one way or the other upon this proceeding.

The Commissioner: I rule the same on the five years.

Mr. Myers: Exception.

Q. Did you receive the money more than five years ago?

Mr. Fallon: If your Honor please, it is all the same question. It is only a question of whether they can ask for more than five years ago any more directly than they can three years ago; but the whole thing is ultimately objectionable. What he now has; the objectionable feature; because that he might be concealing.

The Commissioner: I cannot conceive of any proposition running back more than five years, that could be objectionable. I think that he ought to answer from now on; any money that he has now, that he received more than five years ago, he should disclose and tell about.

Mr. Fallon: Well then, I do not mind if he answers that.

(Question read.)

Mr. Myers: Before he answers, I would like to call your Honor's attention to the fact that Mr. Fallon told him what to answer.

Mr. Fallon: I did not tell him what to answer, or any such thing.

Mr. Myers: Well, I heard it.

Mr. Fallon: I said "Answer if you know."

Mr. Myers: Well, I say that Mr. Fallon told him what to answer. Now, is this going to be a judicial proceeding, or is it going—

Mr. Fallon (interrupting): I simply told him to answer if he knew.

Mr. Myers: I ask your Honor to instruct counsel not to tip off the witness.

Mr. Fallon: We have had so much of this smallness—

The Commissioner: I do not see anything wrong about that, if that is all you said, "Answer if you know."

Mr. Fallon: Certainly; that is what I told him.

177 The Commissioner: I cannot see anything objectionable in that. If you said anything more than that, that is a different proposition. I do not want the witness prompted in any way.

Mr. Fallon: I am not going to prompt this witness.

The Commissioner: "Answer if you know" is co-operating with the efforts of the Court. But the witness is presumably able to take care of himself, and does not need any suggestion. That is the point. Now let us get back on that question again.

Q. (Question read as follows:) Did you receive the money more than five years ago?

The Commissioner: That is the money that is now in his possession, you are referring to now, aren't you, Mr. Myers?

Mr. Myers: Yes sir.

The Commissioner: That question I think you should answer now.

Mr. Fallon: Now answer that.

The Witness: I do not know.

Mr. Myers: You see the effect of the instructions of counsel?

Mr. Fallon: That was not instructions. How could any.
178 one know such a thing?

The Commissioner: I do not know that that is so.

Mr. Fallon: He may have an old pair of cuff buttons that he got four years ago or five years ago. How does he know when he got them?

Q. What bank accounts have you had in the past five years?

Mr. Fallon: We make the same objection to that, your Honor.

A. I cannot answer that, for the same reason.

The Commissioner: For the same reason?

The Witness: Yes, for the same reason.

The Commissioner: I will have to make the same ruling. I sustain the objection.

Mr. Myers: Exception.

Q. What bank accounts have you had in the past four years?

Mr. Fallon: That is the same question, your Honor, only it is more objectionable.

The Commissioner: I think the same ruling you apply, Mr. Myers. It is just reversed with the other. I sustain the objection.

Q. What bank accounts have you had in the past year?

A. I cannot answer, for the same reason.

Same ruling and exception.

179 Q. What safe deposit boxes have you had in the past five years?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. What business were you in at the time of the filing of the petition in bankruptcy in this proceeding?

A. I cannot answer that, for the same reason.

The Commissioner: What is the question?

(Question read.)

Mr. Fallon: That is clearly objectionable, because they claim our business was concealing assets at that time. They claim that was our solitary endeavor. And surely that is objectionable.

The Commissioner: I will sustain the objection.

Mr. Myers: Exception.

Q. What business interests did you have at the time of the filing of the petition in bankruptcy in this proceeding?

A. I cannot answer that, for the same reason.

The Commissioner: What is the question?

Mr. Fallon: That is the same question, your Honor.

(Question read.)

The Commissioner: I shall have to sustain that objection.

180 Q. Were you interested in any business, directly or indirectly, alone or with anyone else, at the time of the filing of the petition in bankruptcy in this proceeding?

Mr. Fallon: That is exactly the same question your Honor had just sustained twice.

(Question read.)

The Commissioner: I think he ought to answer that question. I direct the witness to answer the question.

A. No sir.

Q. Did you have any property, other than money, in your possession or under your control, at the time of the filing of the petition in bankruptcy in this proceeding?

A. I cannot answer that, for the same reason.

The Commissioner: I think that is a proper question. I direct the witness to answer.

Mr. Fallon: If your Honor please, those may be the very assets—

The Commissioner (interrupting): We are not asking him what property.

Mr. Fallon: Just if he had property?

The Commissioner: Any property, other than money, in his possession.

The Witness: Please read the question again?

181 Q. (Question read as follows:) Did you have any property, other than money, in your possession or under your control, at the time of the filing of the petition in bankruptcy in this proceeding?

A. No sir.

Q. How long before the filing of the petition in bankruptcy in this proceeding did you have any property of any nature, kind or description in your possession or under your control?

A. I cannot answer that, for the same reason.

The Commissioner: I think that ought to be answered.

Mr. Fallon: Does your Honor direct him to answer that only if he knows?

The Commissioner: Well, he presumably is able to take care of himself. I wish you would not prompt him in any way; he is no—he does not need all this help.

A. I do not know.

Mr. Myers: Will you read that over again please?

(Question read.)

The Commissioner: I direct you to answer that.

Mr. Fallon: He did answer that, your Honor.

The Commissioner: What is his answer?

Mr. Fallon: He said he did not know.

182 Q. What is your best recollection?

A. No.

Mr. Myers: You did not get the question.

The Commissioner: That is no answer. Will you read it again please, Mr. Parsons?

Q. (Question re-read.)

A. No.

Mr. Myers: You have not got it yet.

Mr. Fallon: He said he did not know, and now he says "No."

Mr. Myers: He does not get the question yet; we will have to read it again. The question calls for a time.

(Question re-read.)

The Commissioner: Mr. Witness, that is a question that is asked every bankrupt, and there is no reason that I know of, why you should not answer it just as fully as you can. We do not expect you to say you cannot remember a thing like that.

Mr. Fallon: Now the difficulty about the question is, your Honor, that he answered he did not know when before that he had property; and they ask him how long before that. If he does not know when he had it, he does not know how long before. That is obvious.

The Commissioner: He ought to know. Any man that
183 has average intelligence ought to be able to answer a question like that. I ask him to just take his time and think it over, and see if we cannot get some kind of a reasonable answer to that question.

The Witness: I cannot remember, sir.

Q. What is your best recollection?

Mr. Fallon: If he does not know, he does not know. I do not see where—he just keeps asking him the same questions and just keeps answering he does not remember. If he does not remember, that is all there is to it.

Mr. Myers: In the Fellerman case, your Honor, Judge Hough sent a man who said he did not know, or did not remember, right over to Ludlow Street till he did remember it.

Mr. Fallon: That is perfectly all right; but we are not in that case now.

Mr. Myers: This case may be just like that.

Mr. Fallon: We will take a chance of that later on.

The Commissioner: We do expect a man who is in bankruptcy to make a reasonable effort to try to remember things that will be helpful to his creditors in locating the assets. He either cooperates, or he does not cooperate with the Court in that regard.

184 Q. Now, what is your best recollection as to when, before the filing of the petition in bankruptcy in this case you had any property?

Mr. Fallon: What do you mean by "property"? If your Honor please, that is no question at all. Does he mean clothes?

The Commissioner: He knows what property means; he does not need to be told that.

Mr. Fallon: Property means so many different things.

The Commissioner: We do not need any further explanation of that; he knows.

The Witness: Really, your Honor, that is the part that is confusing to me, sir; I do not quite understand.

The Commissioner: Do you mean to say you do not know what property is?

The Witness: I do not know what nature of property he is referring to, sir.

The Commissioner: Money; stocks; bonds, furniture; goods.

Mr. Myers: Real estate; automobiles; diamonds.

The Commissioner: Jewelry; stick pins; watches; clothing.

185 The Witness: In general?

Q. Yes; everything.

The Commissioner: Goods of all kinds. That does not need an explanation like that; don't tell me that. Just read the question again.

Q. (Question read as follows:) Now, what is your best recollection as to when before the filing of the petition in bankruptcy in this proceeding you had any property?

The Commissioner: The petition in bankruptcy was filed on February 10th you say, Mr. Myers?

Mr. Myers: February 20th I believe, or the 19th.

The Witness: In the neighborhood of about a year.

Q. Now then, your answer is that you have not had any property of any nature, kinds or description for a period of at least a year next immediately preceding the filing of the petition in bankruptcy in this case; is that right?

A. Just one moment; I am trying to figure the time.

Q. Yes; take your time.

A. Perhaps about seven or eight months I should say.

Q. How?

A. About seven months.

Q. Then your answer is: That for a period of at least seven months immediately preceding the filing of the petition in bank-

186 ruptcy in this proceeding, you did not have any property of any nature, kind or description?

A. Yes sir.

Q. And you have not had any since?

A. I cannot answer that, on the ground it might incriminate me.

Q. Property you have had since the filing of this petition in bankruptcy?

A. Yes sir.

(Last two questions and answers read to the Commissioner.)

Mr. Myers: I asked him whether he had any property since the filing of the petition in bankruptcy. I will ask it over again.

Q. Have you any property of any nature, kind or description since the filing of the petition in bankruptcy in this proceeding?

Mr. Fallon: Now that of course we say is objectionable, because it may involve the secretion of assets, and make us disclose what property we have; and that we have property, puts them upon an inquiry.

Mr. Myers: Secretion can only relate to assets secreted prior to the filing of the petition in bankruptcy. That is the way the Act reads. But in the discovery of assets we can go right down to the time of the discharge.

187 Mr. Fallon: If he has any assets at this time now in his possession, and they can trace them and show that they were concealed, from that very fact alone something may be developed which would militate against this man in a criminal prosecution.

The Commissioner: There is a certain breaking point here. I think that so far as we have gone, he should answer. We are not going into details here. We are just covering the general proposition: Has he assets or hasn't he. Now I think he should answer that question.

The Witness: Yes; I have had a little money from time to time.

Mr. Fallon: No. I ask that your Honor tell him he can answer that just yes or no; not about a little money.

The Commissioner: Yes, that is right; yes or no.

Q. (Question read as follows:) Have you had any property of any nature, kind or description since the filing of the petition in bankruptcy in this proceeding?

A. Yes sir.

Q. What property?

A. Money.

Mr. Fallon: We object to that, if your Honor please; because that clearly is going into detail. Your Honor said that he could stay on the highroad; but now they are going a different way.

188 (Question and answer read to the Commissioner.)

Q. What other property?

Mr. Fallon: That is where we object, if your Honor please. We claim our privilege there. We certainly do not have to give them a specification of the property to have them say that we are denying a specification that somebody else might urge against us.

The Commissioner: Do you claim that the reason for your not answering is the same as to the other questions?

Mr. Fallon: The same as the other questions. This witness is the only man who knows whether an answer to that question, either in the affirmative or the negative, would hurt or help him. He is the only one who can tell that; not because of what that particular question brings forth, but how it may be connected with something else in a series, all of which might argue against him. He has the right to consider all of those things in his refusal to answer; unless it clearly appears that it could not hurt him, he does not have to answer. That is the ruling we all agreed upon.

The Commissioner: I will sustain the objection there then.

189 Mr. Myers: Exception.

Q. How much money have you had since the filing of the petition in bankruptcy in this proceeding?

Mr. Fallon: That is exactly the same question, your Honor.

The Commissioner: Objection sustained.

Exception.

Q. Of what did this property consist which you say you had seven months before the filing of the petition in bankruptcy?

Mr. Fallon: That is the same question.

(Question read.)

Mr. Fallon: His answer was that he didn't have any.

Mr. Myers: Oh no; his answer was that seven months before the filing of the petition in bankruptcy he had certain property; seven months before last February.

Mr. Fallon: That calls for the disclosure of what assets may be contended to be concealed here; and they are so clearly objectionable that we cannot gain anything by repeating them and reiterating them.

The Commissioner: You refuse to answer that question on what ground?

190 Mr. Fallon: State the ground.

The Witness: On the ground that it may incriminate me, sir.

The Commissioner: May incriminate or degrade you?

The Witness: Yes sir.

The Commissioner: I shall have to sustain the objection.

Exception.

Q. Have you had any automobiles during the past year?

Mr. Fallon: We make the same objection to that, if your Honor please.

The Commissioner: I shall sustain that objection.

Exception.

Q. Have you any automobiles now, either in your possession or under your control?

A. No sir.

Mr. Fallon: Now, don't answer that.

Q. Have you had any diamonds or jewelry during the past year?

A. I cannot answer that question, on the same ground.

Mr. Fallon: He has answered generally about the property, and your Honor sustained the objection. Now we are just going over and over and over these same questions.

191 The Commissioner: I think these questions are all very much in the same class. I rule the same on all of them.

Mr. Fallon: They are all exactly the same, certainly.

The Commissioner: Make your record, Mr. Myers, and go right on.

Mr. Myers: I have asked a question. There is no ruling. Will you read the question?

Q. (Question read as follows:) Have you had any diamonds or jewelry during the past year?

Mr. Fallon: Now those are assets that we might be accused of concealing.

The Commissioner: Mr. Fallon, a whole lot of things might be.

Mr. Fallon: Yes, but it is: what does he know?

The Commissioner: I know that, but—

Mr. Fallon: You see, the difficulty that we went over with Judge Knox, and upon which we are all agreed, was that asking him about diamonds; perhaps that particular thing would not make any difference. Then they ask him about something else. Now it is in the series of these questions, in which each one plays a part, that enables this witness to see that he cannot conscientiously
192 answer any one of them.

Mr. Myers: Everything in this world plays a part into something else.

Mr. Fallon: Yes; everything plays a part. And some a second part. But that is why he cannot answer a question that leads to the specification of another detail, and from the collection of those details there will arise that which might point the finger of accusation at this defendant. He is the judge of whether he can answer that or not.

Mr. Myers: That is true about everything in this world.

Mr. Fallon: Mr. Myers will get into this conversation; he brings the whole world in. But it is so obvious that these questions are objectionable. Suppose he said "Yes"? Then upon that they would be led into an inquiry into something which might be concealed. Certainly they haven't it here. Now, if he said "Yes," naturally that would put them upon an inquiry, a further inquiry, perhaps from other witnesses, in order to ascertain whether that particular thing had been concealed. He is giving them knowledge

upon which they can act. Now, Judge Knox stated very plainly
 193 that if he were asked about somebody, and that somebody
 could come in and say something against him, that he had the
 right to refuse his acquaintance with that somebody, as a
 question of testimony. I do not know where those different proposi-
 tions can be distinguished. He has the right to refuse to answer
 any of those things; unless it can be plainly shown and absolutely
 appears that the question cannot hurt him, he is entitled to refuse
 to answer.

The Commissioner: Have you anything to say further, Mr. Myers?

Mr. Myers: No.

The Commissioner: I shall have to sustain the objection.
 Exception.

Q. Have you had any stocks or bonds during the past year, either
 in your name or possession or under your control?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Have you had access to any safe deposit boxes during the past
 year?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Have you had any bank accounts anywhere in the United
 States during the past year?

194 A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Have you had any safe deposit boxes, either in your name or
 in anyone else's name, anywhere in the United States, during the
 past year?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Do you know Joseph Gluck?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. When did you see Joseph Gluck last?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Have you seen him at all during the past five years?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Have you seen him at all during the past ten years?

A. I cannot answer that, for the same reason.

The Commissioner: Ten years, Mr. Myers, must be beyond the period of the conspiracy, whatever that period may be. Surely that is more objectionable than the previous question.

195 Q. Have you seen Joseph Gluck during the past year?
A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Have you seen him during the past six months?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Have you seen him at any time or any place during the past ten years?

A. I cannot answer, for the same reason.

Same ruling and exception.

Q. Did you ever receive any property of any nature, kind or description from Joseph Gluck?

A. I cannot answer, for the same reason.

Same ruling and exception.

Q. Do you know Philip Kastel?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Do you know who Philip Kastel is?

A. I cannot answer that, for the same reason.

The Commissioner: Well, I think you might answer that.

Mr. Fallon: Make the best answer you can to that.

The Witness: Yes sir.

Mr. Myers: Will you read the question? That is not any answer.

196 (Question read.)

Mr. Myers: Who is he?

Mr. Fallon: We object to that, if your Honor please. Kastel is one of those, for some reason that I do not understand, whom it has been suggested has been connected with these particular transactions. Now it is not for him to say who he is, clearly, because that again leads to the disclosure not only of who he is, but how he knows who he is.

The Commissioner: Well, I think that objection will have to be sustained.

Exception.

Q. Do you know where Philip Kastel lives?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. When did you see him last?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Where did you see him last?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. How long have you known him?

197 A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Do you know where he is now?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Where was he when you saw him last?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Have you been in communication with Philip Kastel during the past year?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Have you been in communication with Joseph Gluck during the past year?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Do you know one Ed. Winkler?

A. I cannot answer that, for the same reason.

The Commissioner: Just assume the same ruling on all these questions. I will listen carefully, and if there are any which in my opinion are allowable, I will say so.

Mr. Fallon: Surely.

Q. How long have you known Ed. Winkler?

198 A. I cannot answer that, for the same reason.

Q. Do you know where he is now?

A. I cannot answer that, for the same reason.

Q. Do you know where he lives?

A. I cannot answer that, for the same reason.

Q. When did you see him last?

A. I cannot answer that, for the same reason.

Q. Where did you see him last?

A. I cannot answer that, for the same reason.

Q. Did you ever receive any property from him?

A. I cannot answer that, for the same reason.

Q. Directly or indirectly?

- A. I cannot answer that, for the same reason.
Q. Of any nature, kind or description?
A. I cannot answer that, for the same reason.
Q. Have you ever had any communication with him during the past year?
A. I cannot answer that, for the same reason.
Q. Do you know where Nick Cohen is?
A. I cannot answer that, for the same reason.
Q. How long have you known him?
A. I cannot answer that, for the same reason.
Q. Do you know his address?
199 A. I cannot answer that, for the same reason.
Q. Do you know where the Court could find him?
A. I cannot answer that, for the same reason.
Q. Do you know where a communication could be delivered to him?
A. I cannot answer that, for the same reason.
Q. Have you had any communication with him during the past year?
A. I cannot answer that, for the same reason.
Q. Did you ever receive any property from him, directly or indirectly?
A. I cannot answer that, for the same reason.
Q. Do you know Charles Druckker?
A. I cannot answer that, for the same reason.
Q. Well, do you know where he lives?
A. I cannot answer that, for the same reason.
Q. Can you give a description of him?
A. I cannot answer that, for the same reason.
Q. When did you see him last?
A. I cannot answer that, for the same reason.
Q. Where did you see him last?
A. I cannot answer that.
Q. How long have you known him?
A. I cannot answer that.
200 Q. Did you receive any property from him of any nature, kind or description during the past year?
A. I cannot answer that, for the same reason.
Q. Have you ever had any business transactions with Charles Druckker?
A. I cannot answer that, for the same reason.
Q. Or with Nick Cohen?
A. I cannot answer that, for the same reason.
Q. Or with Edward Winkler?
A. I cannot answer that.
Q. Or with Philip Kastel?
A. I cannot answer that, for the same reason.
Q. Or with Joseph Gluck?
A. I cannot answer that, for the same reason.
Q. Do you know David Sullivan?
A. I cannot answer that, for the same reason.

Q. Have you ever had any business dealings with him?

A. I cannot answer that, for the same reason.

Q. Did you ever receive any property from him?

A. I cannot answer that, for the same reason.

Q. Did you ever give any property to him?

A. I cannot answer that.

Q. Do you know what city he lives in?

A. I cannot answer that, for the same reason.

201 Q. Will you say when you spoke with him last?

A. I cannot answer that.

Q. Do you know John Hogan?

A. I cannot answer that, for the same reason.

Q. Do you know where his office is?

A. I cannot answer that, for the same reason.

Q. Do you know where he lives?

A. I cannot answer that, for the same reason.

Q. Did you ever have any business dealings with him?

A. I cannot answer that, for the same reason.

Q. Did you ever have any communication with him during the past year?

A. I cannot answer that, for the same reason.

Q. Do you know Murray Fox?

A. I cannot answer that, for the same reason.

Q. Do you know where he lives?

A. I cannot answer that, for the same reason.

Q. Or what his business is?

A. I cannot answer that, for the same reason.

Q. Did you ever receive any property from him?

A. I cannot answer that, for the same reason.

Q. Do you know Kenneth Bernard?

A. I cannot answer that.

202 Q. Did you ever have any business dealings with him?

A. I cannot answer that, for the same reason.

Q. Did you ever know Mortimer Bernstein?

A. I cannot answer that, for the same reason.

Q. Did you ever have any business dealings with him?

A. I cannot answer that.

Q. Did you ever give him any property of any nature, kind or description?

A. I cannot answer that, for the same reason.

Q. Did you ever receive any property from him of any nature, kind or description?

A. I cannot answer that, for the same reason.

Q. How long did you know him before he died?

A. I cannot answer that, for the same reason.

Q. How well did you know him?

A. I cannot answer that.

Q. Do you know Louis Bleet?

A. I cannot answer that, for the same reason.

Q. Do you know where he is now?

A. I cannot answer that.

Q. When did you see him last?

A. I cannot answer that.

Q. Where did you see him last?

A. I cannot answer that, for the same reason.

203 Q. Did you ever receive any property from him?

A. I cannot answer that, for the same reason.

Q. Have you ever given any property to him?

A. I cannot answer that, for the same reason.

Q. Have you had any communication with him of any kind during the past year?

A. I cannot answer that.

Q. Do you know Norman S. Bowles?

A. I cannot answer that, for the same reason.

Q. Did you ever meet him?

A. I cannot answer that.

Q. Did you ever have any business transactions with him?

A. I cannot answer that, for the same reason.

Q. Do you own any real estate now?

A. I cannot answer that, for the same reason.

Mr. Fallon: Your Honor, that is the very question we have been over so often. Suppose he says "Yes"? Then the question is: "Where did you get it?" Then the question is: "Where did you get the money?" So that that puts them on a track whereby they can search possible assets that are not disclosed. The same as telling them the name or address of a man, so that they can get from that man what we have said, or what we have left unsaid. That is the same situation exactly. If we have real estate, the inquiry is:

204 Where did we get the money? And that puts them on a direct trail, if it were so.

The Commissioner: I should sustain the objection on that. Exception.

Q. Do you know W. W. Easterday?

A. I cannot answer that, for the same reason.

Q. Well, did you ever see W. W. Easterday anywhere?

A. I cannot answer that, for the same reason.

Same ruling and exception.

Q. Did you see W. W. Easterday at the Bretton Hall Hotel, New York City, on October 12th last?

A. I cannot answer that, for the same reason.

Q. Did you see him there with one Nick Cohen at that time?

A. I cannot answer that, for the same reason.

Mr. Myers: What has that got to do with this man Easterday?

Mr. Fallon: Why, they endeavor to connect him——

The Commissioner: It might have a whole lot to do.

Mr. Myers: Just to see him there?

Mr. Fallon: A great deal to do with it.

Mr. Myers: I suppose if he saw a parade he could not testify about that.

205 Mr. Fallon: Yes; so that he could go there and bring him back to confront us?

The Commissioner: I think that is in the same general class of questions to be ruled on the same way. Objection sustained. Exception.

Q. Do you know where W. W. Easterday lives?

A. I cannot answer that, for the same reason.

Q. Can you describe him?

A. I cannot answer that, for the same reason.

Q. Did you ever receive any property from him?

A. I cannot answer that, for the same reason.

Q. Did you ever give him any property?

A. I cannot answer that, for the same reason.

Q. Did you ever receive any money from him?

A. I cannot answer that, for the same reason.

Q. Did you receive any money from him during October, November and December last year?

A. I cannot answer that, for the same reason.

Q. Or any time this year?

A. I cannot answer that.

Q. Well, if you did, will you say what you did with it?

A. I cannot answer that.

Q. Did you meet W. W. Easterday in Washington last October and November?

206 A. I cannot answer that, for the same reason.

Q. Did you meet David Sullivan in Washington in last October and November?

A. I cannot answer that, for the same reason.

Q. Did you meet Joseph Gluck in Washington last October and November?

A. I cannot answer that, for the same reason.

Q. Did you meet any of those persons in Boston, Philadelphia, and Baltimore last October, November and December?

A. I cannot answer that, for the same reason.

Q. Were you ever in the Hotel Touraine last year?

A. I cannot answer that, for the same reason.

Q. Were you in the Hotel Bellevue-Stratford in Philadelphia last Fall?

A. I cannot answer that, for the same reason.

Q. Were you at the Hotel Belvedere in Baltimore last Fall?

A. I cannot answer that, for the same reason.

Q. Who did you meet in those hotels last Fall?

A. I cannot answer that, for the same reason.

Q. Did you ever register in any hotel outside of New York under any other name than Arnold?

A. I cannot answer that, for the same reason.

Q. Did you ever go under any other name?

207 A. I cannot answer that, for the same reason.

Q. Have you been out of the United States during the past six months?

A. I cannot answer that, for the same reason.

Q. Have you been out of New York State during the past six months?

A. I cannot answer that, for the same reason.

Q. What cities have you visited during the past six months?

A. I cannot answer that, for the same reason.

Q. With what persons have you talked during the past three months?

A. I cannot answer that, for the same reason.

Q. What banks, trust companies, or safe deposit boxes have you been to in the past three months?

A. I cannot answer that, for the same reason.

Q. Have you been to Cleveland, Ohio?

A. I cannot answer that, for the same reason.

Q. Did you there meet Cheeks Ginsburg?

A. I cannot answer that, for the same reason.

Q. Or Roughy Ginsburg?

A. I cannot answer that for the same reason.

Q. Or Paddy Goldberg?

A. I cannot answer that, for the same reason.

208 Q. Or Forrest L. Graves?

A. I cannot answer that.

Q. Or E. P. Strong?

A. I cannot answer that, for the same reason.

Q. Or Dona Arkin?

A. I cannot answer that.

Q. Or Samuel Haas?

A. I cannot answer that.

Q. Do you know whether this lawyer, Samuel Haas, has been convicted in Cleveland, Ohio?

A. I cannot answer that, for the same reason.

Q. Was he convicted in reference to any transaction which you had with him?

A. I cannot answer that, for the same reason.

Q. Did you ever have any transactions with him?

A. I cannot answer that, for the same reason.

Q. Is E. P. Strong your attorney in Cleveland?

A. I cannot answer that, for the same reason.

Q. Is Samuel Haas an associate of E. P. Strong?

A. I cannot answer that, for the same reason.

Q. Have you ever had any business dealings with E. P. Strong?

A. I cannot answer that, for the same reason.

Q. Did you meet Mr. McGee, Mr. Fallon's partner, in Cleveland?

A. Yes sir.

Q. When?

A. I don't remember the date.

Q. What is your best recollection?

209 Mr. Fallon: If your Honor please, I do not think because it happens to be Mr. McGee, that he has to answer that any more than any other.

Mr. Myers: That is his law partner.

Mr. Fallon: Yes, I know that.

Mr. Myers: Mr. Fallon's law partner.

The Commissioner: He has already stated that to the public press, when he did it.

Mr. Fallon: Yes sir.

The Commissioner: There is no secret about that. He might as well answer that question.

Mr. Fallon: He did answer the question, your Honor but——

Mr. Myers (interrupting): He said he cannot remember.

Q. Now, what is your best recollection as to the month?

A. It was in February.

Q. Can you say what date?

A. I could not say.

Q. Was it before or after Washington's Birthday?

A. I really could not say.

Q. You know when Washington's Birthday is?

Mr. Fallon: The 22nd of February.

A. Yes. I could not say. I do not know whether it was before or after.

Q. You know Washington's Birthday is February 22nd, don't you?

A. Yes; I think it is.

Q. Don't you know?

A. No.

Q. Aren't you sure?

A. (No answer.)

Q. Was it before or after that that you saw Mr. McGee, Mr. Fallon's partner, in Cleveland?

A. I could not really say. I do not know.

Q. Don't you know where you were on Washington's Birthday, that being a public holiday of importance?

A. No, I do not.

Q. How?

A. No sir.

Q. Were you at the Winton Hotel in Cleveland, Ohio on that day?

A. I could not say what day it was.

Q. Did you have a room there?

Mr. Fallon: Now just a minute, if your Honor please. I ask that he be instructed that he does not need to answer that; because that gives them a method of tracing his whereabouts, and that they are not entitled to get from this witness.

The Commissioner: Tracing what?

Mr. Fallon: That puts them upon a method of investigating his whereabouts and we do not have to put them in a position to make that inquiry.

Mr. Myers: I do not think we need any new methods.

Mr. Fallon: Well, you need another one other than the one you are pursuing.

Mr. Myers: We have a few that we have not told you about.

Mr. Fallon: Well, I will be surprised if they avail you anything.

The Commissioner: Has this all been gone over before?

Mr. Fallon: Yes; all been gone over, over and over again.

The Commissioner: I think, strictly speaking, he should not be required to answer that. He claims his privilege on the statutory grounds, as I understand it.

Q. Did you meet E. P. Strong in that hotel?

A. I cannot answer that, for the same reason.

Q. That too would incriminate you?

Mr. Fallon: Now just a minute. That is a very unfair question: "That too would incriminate you." That is not a question.

The Commissioner: Who is E. P. Strong?

Mr. Myers: He is a lawyer in Cleveland, Ohio.

212 Mr. Fallon: He is a lawyer in Cleveland who has been named in this matter, and he has been endeavored to be drawn into this transaction.

Mr. Myers: He has been drawn in.

Mr. Fallon: You say he has been drawn in. Then for that reason the question should not be asked. He has not been drawn in, however; he is a highly representative person. Of course, we do bandy about reputations here without regard to anyone.

The Commissioner: How is that material, Mr. Myers?

Mr. Myers: We say that E. P. Strong has received a large amount of assets from this man, from this estate.

Mr. Fallon: Then we do not have to tell about it, if that is so.

The Commissioner: If that is your claim——

Mr. Myers: Yes, that is our claim.

The Commissioner: If he is implicated in it, I do not see——

Mr. Myers (interrupting): We do not say he is implicated. We say Strong is. Now, is this incrimination business going to protect every one in the United States? That is the proposition.

The Commissioner: Not at all.

213 Mr. Myers: Well, that is the ruling.

The Commissioner: No; not at all. This man claims—you have asked him a question about Strong, which he claims would tend to incriminate him—not Strong particularly; but he claims that his dealings with Strong, or the disclosure of his dealings with Strong, would tend to incriminate or degrade him, and that therefore he is privileged to decline to answer that question.

Q. Do you know Nate Cook from Cleveland?

A. I cannot answer that, for the same reason.

Q. Do you know Henry Beckerman of Cleveland?

A. I cannot answer that.

Q. Do you know Samuel Doerfler, D-o-e-r-f-l-e-r, of Cleveland?

A. I cannot answer that, for the same reason.

Q. Do you know Ernest Bernstein of Cleveland?

A. I cannot answer that, for the same reason.

Q. Do you know Aleck Bernstein of Cleveland?

A. I cannot answer that, for the same reason.

Q. Have you ever had any business transactions with any of these persons?

A. I cannot answer that, for the same reason.

Q. Have you ever delivered any securities to any of these persons?

214 A. I cannot answer that, for the same reason.

Q. Or received any money from them?

The Commissioner: Now wait a minute. When you say you can not answer that, do you intend to claim your privilege to each of those questions?

The Witness: Yes sir.

The Commissioner: I think that should be put on the record.

Mr. Fallon: I think so too. He refuses to answer for the reason it may tend to degrade or incriminate.

The Commissioner: It is so noted. Just say: "Same answer." When he claims his privilege he must claim it; he must put it on the record.

Mr. Fallon: Exactly.

Q. Have you at any time during the past six months heard any conversation between Joe Gluck and Nick Cohen?

A. I refuse to answer that, for the same reason: It tends to incriminate.

The Commissioner: Objection sustained.

Exception.

Q. Do you know under what different names Nick Cohen has been known?

A. I cannot answer that, for the same reason.

215 Same ruling and exception.

Q. Do you know whether he is an ex-convict?

A. I cannot answer that, for the same reason.

Q. Do you know whether he is the man who was convicted under the name of Harry Davis and served a term in a Cleveland Penitentiary?

A. I cannot answer, for the same reason.

Same ruling and exception.

Q. Do you know whether he has been known as Mack?

A. I cannot answer.

Q. Have you been known as George?

A. I cannot answer, for the same reason.

Q. Do you know Arthur Ecremont?

A. I cannot answer, for the same reason.

Q. Did you ever have any business dealings with him?

A. I cannot answer that, for the same reason.

Q. Did you ever hand him any securities, directly or indirectly?

A. I cannot answer that, for the same reason.

Q. Or receive any money from him directly or indirectly?

A. I cannot answer that, for the same reason.

Q. Did you meet him in Chicago recently?

- A. I cannot answer that, for the same reason.
- 216 Q. Did you meet Phil. Kastel in Chicago recently?
A. I cannot answer that, for the same reason.
- Q. Did you meet Charles Druckker in Chicago recently?
A. I cannot answer that, for the same reason.
- Q. Did you meet Ed. Winkler in Chicago recently?
A. I cannot answer that, for the same reason.
- Q. Did you ever, in the past three months, hand any one of those persons any securities of any nature, kind or description?
A. I cannot answer that, for the same reason.
- Q. Or receive any money from them?
A. I cannot answer that, for the same reason.
- Q. Do you know Ed. Furey?
A. I cannot answer that, for the same reason.
- Q. Did you ever see Ed. Furey?
A. I cannot answer that, for the same reason.
- Q. Did you ever have any business dealings of any kind with him?
A. I cannot answer that, for the same reason.
- Q. Did you ever receive any property from him of any nature, kind or description?
A. I cannot answer that, for the same reason.
- Q. Or give him any?
A. I cannot answer that, for the same reason.
- 217 Q. Do you know James Kean of Montreal?
A. I cannot answer that, for the same reason.
- Q. Or James Kean of Perth, Ontario?
A. I cannot answer that, for the same reason.
- Q. Did you ever have any dealings with him of any nature, kind or description?
A. I cannot answer that, for the same reason.
- Q. Do you know Joseph Klein?
A. I cannot answer that, for the same reason.
- Q. Did you ever have any business dealings with him of any nature, kind or description?
A. I cannot answer that, for the same reason.
- Q. Did you ever give to him or receive from him any property of any nature, kind or description?
A. I cannot answer that, for the same reason.
- Q. Do you know Don Lloyd, or Dan Lloyd, either one?
A. I cannot answer that, for the same reason.
- Q. Did you ever have any dealings with either one of those persons?
A. I cannot answer that, for the same reason.
- Q. Did you ever give them any property?
A. I cannot answer that, for the same reason.
- Q. Or receive any from them?
A. I cannot answer that for the same reason.
- 218 Q. Do you know Joe Marino?
A. I cannot answer that, for the same reason.
- Q. Or Sam Gireau?

A. I cannot answer that, for the same reason.

Q. Or Michael Radice, R-a-d-i-c-e?

A. I cannot answer that, for the same reason.

Q. Or George Hackett?

A. I cannot answer that, for the same reason.

Q. Or John Loomis?

A. I cannot answer that, for the same reason.

Q. Or Frank Bradford?

A. I cannot answer that, for the same reason.

Q. Did you ever have any business dealings with them, of any nature, kind or description?

A. I cannot answer that, for the same reason.

Q. Did you ever give them any property?

A. I cannot answer that, for the same reason.

Q. Or receive any from them?

A. I cannot answer that, for the same reason.

Q. Have you had any communication with any of these persons about whom I have asked you, at any time during the past three months?

A. I cannot answer that, for the same reason.

219 Q. Were you in communication with Messrs. Fallon & McGee while you were away from New York, since February 10th, last?

A. I cannot answer that, for the same reason.

The Commissioner: Is that privileged?

Mr. Fallon: Certainly that is privileged.

Mr. Myers: What is the ruling?

Mr. Fallon: Yes; that is privileged for two reasons: Attorney and client, and otherwise.

Mr. Myers: I have not asked him for the contents of the communication.

Mr. Fallon: I understand that; but the fact that he consults an attorney is privileged as well. He does not have to disclose.

Mr. Myers: Well, Judge A. N. Hand ruled the other way, and made Mr. McGee answer right in his own Chambers. Here is the testimony right here.

Mr. Fallon: I know what he made him testify to, and what he did testify to, the same as I did.

The Commissioner: You have not that testimony here, have you Mr. Myers?

Mr. Myers: Yes sir, I have. (Handing the Commissioner transcript of testimony.) I will withdraw the question now,

220 your Honor. I withdraw it on the ground that while your Honor was considering whether to direct the witness to answer,

Mr. Fallon was talking to him. I do not care to know what he talked to him about, but I say it is improper from every standpoint, and I withdraw the question.

Mr. Fallon: I simply told the witness that I had not the slightest objection to telling him that entire transaction; and he knows that what I told him.

Mr. Myers: We will bring that out when we come up in Court.

Mr. Fallon: I said "I have not the slightest objection to your telling everything that was said between McGee or myself."

Mr. Myers: That thing could not happen in Court, your Honor.

Mr. Fallon: You claim it did happen. It could not happen? You claim it did.

Mr. Myers: We will look that up later.

Q. Do you know anyone who has an account in the Pacific Bank?

A. I cannot answer that, for the same reason.

Q. Do you know whether Nick Cohen has?

A. I cannot answer that, for the same reason.

Q. Or any of these persons about whom I have questioned you?

A. I cannot answer that, for the same reason.

Q. Have you any there?

A. I cannot answer that, for the same reason.

Q. Have you any safe deposit box there?

A. I cannot answer that, for the same reason.

Q. Do you know anyone who has?

A. I cannot answer that, for the same reason.

Q. Do you know Mattie Pandolfi?

A. I cannot answer that, for the same reason.

Q. Or Joe Peppe?

A. I cannot answer that, for the same reason.

Q. Or Jimmy Ryan, otherwise known as the Postal Kid?

A. I cannot answer that, for the same reason.

Q. Or Frank Thompson?

A. I cannot answer that, for the same reason.

Q. Did you deliver any property of any nature, kind or description to any of those persons in the past six months?

A. I cannot answer, for the same reason.

Q. Did you receive any from them?

A. I cannot answer that, for the same reason.

Q. Have you been in communication with any of them during that time?

A. I cannot answer that, for the same reason.

222 The Commissioner: Here is the ruling by the Court in the examination of Mr. McGee, about conversations had with Mr. Arndstein. The Court says: "You cannot ask him what the communications were; but I will allow any matters that divulge the fact that there were communications."

Mr. Fallon: Yes; just that mere fact.

The Commissioner: That is all that Mr. Myers asked, as I recall.

Mr. Fallon: Well, I say, even beyond that, I do not mind if he does go into that, if he wants to know what happened. There is nothing to conceal. The only point about it, I did not know that Mr. Myers considered that it was not incriminating for anyone to talk to McGee. That is the only part I did not get quite clear.

Mr. Myers: That depends upon the circumstances. I can conceive of a situation where it would be.

Mr. Fallon: Where it might be all right? That would require a great mental effort.

The Commissioner: How much longer are you going to keep this up, Mr. Myers?

Mr. Myers: We will go on as long as you are willing to go on; or we will stop and take this record up as far as we have gone, and take an adjournment.

223 The Commissioner: What I am getting at is this: Haven't you made enough to show the character, that we were talking about, so as to certify the record?

Mr. Fallon: Certainly.

Mr. Myers: Well, to some extent, yes.

The Commissioner: I mean, haven't you covered practically the character of the different questions?

Mr. Myers: I think it is enough for the Judge to see whether the witness is guilty of contempt or not.

Mr. Fallon: Not whether he is or not guilty of contempt; but whether he will return this witness to answer any single one of these questions or not.

Mr. Myers: Whether he will adjudge this witness in contempt now, on this record.

Mr. Fallon: Because all of these objections have been sustained, substantially. Now the only question is, will any other Court, upon this record, summon this witness and order him to answer, either here or before himself, to answer any question that has not been answered here. If he should say that it has been a refusal to answer, they can proceed for contempt.

224 The Commissioner: I would suggest then, Mr. Myers, that if you have covered the general character of questions that were referred to by the Judge this afternoon, covered the general ground in a general way with respect to the questions asked, to give us a basis to work on in the future, that you stop right here, and not make up too large a record for the Judge; that is all; not make up too much for him to read; if you have covered the general points, the general line of examination.

Mr. Fallon: There is no doubt that he has made a general survey of the situation.

The Commissioner: Now, if there is any other line that you want to take up, general line of examination?

Mr. Myers: Yes; I think I would like to ask a few more questions.

The Commissioner: I would say to go ahead and finish up those questions this afternoon. In other words, get a typical set of questions, for practically every line of this examination of the witness, before you stop.

Q. Did you ever live at the Wellington Hotel in this City?

A. I cannot answer that, for the same reason.

Q. Have you been there during the past year?

A. I cannot answer that, for the same reason.

Q. Did you ever receive any money from David Sullivan in New York City?

A. I cannot answer that, for the same reason.

225 Q. During the past year?

A. I cannot answer that, for the same reason.

Q. Did you receive any money from David Sullivan any other place during the past year?

A. I cannot answer that, for the same reason.

Q. Did you receive any money from Nick Cohen at any place during the past six months?

A. I cannot answer that, for the same reason.

Q. Or during the past year?

A. I cannot answer that, for the same reason.

Q. Did you give any money to your wife during the past year?

A. I cannot answer that, for the same reason.

Mr. Myers: Same ruling?

Mr. Fallon: They have asked her if she has any safe deposit boxes, implying that she has some securities hidden away.

The Commissioner: It seems to me that is a proper question.

Mr. Fallon: Maybe I do not make my point clear. You see, throughout this inquiry they have been endeavoring to ascertain the relatives of this man; and the reason for that was to find out whether or not they were possible outlets for these securities

226 or these assets which they think this man possessed. Now then, he does not have to say whether or not he gave anything to his wife, because immediately they will say "What was it?" And then they know whether or not there is something there that they can investigate. We do not have to put them upon any method of finding out any of these affairs. That question is more objectionable.

The Commissioner: They have the right to examine here as to any transactions with the bankrupt.

Mr. Fallon: Exactly; but—

The Commissioner (interrupting): Do you mean to say they have not the right to examine him as to business that he has had with her?

Mr. Fallon: Naturally; that business dealing might involve assets that have not been disclosed; and when they ask about assets, undoubtedly it is for the purpose of finding whether or not she has some assets hidden away. There is no difference between that question and any other one of the hundred other questions we have had before; they are all the same: Did he give her something? If so, what? Why isn't it here? Why isn't it disclosed now? He knows whether he can answer that question or not. It is obvious to him that he cannot answer it.

227 The Commissioner: Well, do you claim your privilege on that question?

Mr. Fallon: We claim our privilege on that question, yes, your Honor.

The Commissioner: I will have to sustain the objection.

Mr. Myers: Exception.

Q. Have you paid any money to Mr. Fallon during the past six months?

Mr. Fallon: Will you let me answer that?

A. No sir.

Q. Have you agreed to pay him any?

A. No.

Q. Have you given him any property of any nature, kind or description during the past six months?

A. No sir.

Q. Now, are your answers the same in reference to Mr. McGee?

A. Yes sir.

Q. And to Randolph Newman?

Mr. Fallon: If your Honor please, I have not objected to anything, because, so far as I am concerned, I would just as lief let the world know. But this has nothing at all to do with Randolph Newman, clearly, and I know that your Honor is willing that he be instructed that he has the right to refuse to answer anything that he
228 gave to Newman.

The Commissioner: Who is Newman?

Mr. Fallon: Newman is a lawyer who has been mentioned in this matter.

Mr. Myers: A lawyer in this City.

The Commissioner: Well, is not Newman in the same position as Strong?

Mr. Fallon: Exactly so, your Honor. You of course sustained the objection on Strong. The same thing would apply to Newman.

The Commissioner: Do you claim anything beyond the relation of attorney and client?

Mr. Myers: We do not make any claims at all. We are investigating the bankrupt as to his property, and he ought to disclose it, unless he has something to hide. If he has something to hide, he claims his privilege. When a bankrupt does not testify truthfully and frankly about his assets, he has something to hide. Now, either he is taking one position or the other.

Mr. Fallon: Of course we take the legal position that we do not have to answer.

The Commissioner: You do not object to this question on the same grounds that you have been urging right along, do
229 you? This is a different proposition altogether?

Mr. Fallon: No. You see, they ask him if he knows Randolph Newman. Now, suppose he said "Yes"? The question would be: What did he give him? And were those things part of the assets that they may claim have not been disclosed in this proceeding. So that it all gets right back to the same simple proposition: He cannot take the position here and say "Yes, I gave Newman something." And then allow them to go upon a further research into Newman's affairs and find out if Newman is not helping him secrete these assets. That is exactly the point we had up before the Judge: He does not have to open up any single avenue whereby they can investigate Newman. So far as he is concerned, he can, by adopting the legal position, that this closes every door to investigation of these people.

The Commissioner: He cannot close every door; he can only close the door that will lead to incrimination.

Mr. Fallon: I mean, on that proposition, with your Honor's limitation; of course that is what I mean.

The Commissioner: In the transactions with attorneys, so far as employing them and doing business with them, they are not, as far as I can see, prejudicial to the witness in any way. There
230 is no reason why he should not answer such a question as that, to my mind.

Mr. Fallon: I do not mind his answering it.

The Commissioner: Go right ahead.

Q. (Question read as follows:) Or to Randolph Newman?

A. No sir.

Q. Did you give any money or property of any nature, kind or description to any other attorney during the past six months?

A. No sir.

Q. Or to any other person?

A. I cannot answer.

Mr. Fallon: That is a different question altogether.

Mr. Myers: You draw the line at attorneys, do you?

Mr. Fallon: No; I will tell you: I like to see attorneys get money. If I had my say, he would answer "Yes" to all those questions.

Q. Have you been in Atlantic City during the past three months?

A. I cannot answer that, for the same reason.

Q. Have you been in or near Pittsburgh during the past three months?

A. I cannot answer, for the same reason.

Q. Do you know anyone by the name of Henry Stern?

A. I cannot answer that, for the same reason.

Q. Do you know anyone by the name of Dan McKettrick?

A. I cannot answer that, for the same reason.

231 Q. Have you sent any securities, directly or indirectly to any other country during the past six months?

A. I cannot answer that, for the same reason.

Q. Have you had any communication, directly or indirectly with anyone in any foreign country, during the past six months?

A. I cannot answer that, for the same reason.

Q. Were you in communication with your wife while you were away from New York since last February?

A. No sir.

Q. Directly or indirectly?

A. I cannot answer that, for the same reason.

Q. With whom were you in communication since February 10th last?

Mr. Fallon: If your Honor please, we have been over this ground so often.

The Commissioner: What is that again?

(Question read to the Commissioner.)

The Commissioner: That is quite improper, Mr. Myers, if he takes that stand about anything incriminating or degrading him.

Mr. Fallon: He has, your Honor.

Q. Do you remember meeting Joe Gluck and Nick Cohen at Washer's Café last October?

A. I cannot answer that for the same reason.

232 Q. Do you remember going with them to the Pennsylvania Station?

A. I cannot answer that, for the same reason.

Q. Do you remember meeting Joe Gluck and Nick Cohen at the Hotel Endicott in this City, last November?

A. I cannot answer that, for the same reason.

Q. Do you know anybody in Cleveland by the name of Feder, Feder?

A. I cannot answer that, for the same reason.

Q. Have you any relative by that name?

A. No sir.

Q. Has your wife?

A. I cannot answer that.

The Commissioner: What is that question?

Mr. Fallon: Has his wife a relative by the name of Feder. He says he does not know that.

The Witness: I do not know.

Q. Hasn't your wife's mother a sister living in Cleveland by the name of Feder?

A. I do not know.

Q. Did you visit anyone by the name of Feder in Cleveland during the past three months?

A. No sir.

Q. Were you at the Hotel Hollender in Cleveland during the past three months?

A. I cannot answer that, for the same reason.

233 Q. Were you at the Hotel Wilton at any time during the past three months?

A. At the Winton?

Q. At the Winton, Cleveland.

A. Yes.

Q. More than once?

A. No; only once.

Q. That is the time that you met Mr. McGee?

A. Yes sir.

Q. And you were there just for that one day?

A. Yes.

Q. Just one day. Where did you come from; Pittsburgh?

A. I cannot answer that.

Q. Where did you leave Mr. McGee?

A. Where I found him.

Mr. Fallon: You mean where or how?

Mr. Myers: Both.

Q. Were you at the home of Dona Arkin while you were in Cleveland during the past three months?

A. I cannot answer that, for the same reason.

Q. Do you know where Dona Arkin lives in Cleveland?

A. No sir.

Q. You do not?

A. No.

Q. You never were to her house?

A. No.

Q. You were never to her home?

A. No.

Q. In Cleveland or elsewhere?

A. No.

Q. But you did meet her at the Hotel Winton, didn't you?

A. That I cannot answer, for the same reason.

234 Q. Room 604?

Mr. Fallon: Well, he is sorry if he did not. Now let us go ahead.

Q. Have you met Lew Brice, a brother of Fannie Brice, your wife, during the past six months?

A. No sir.

Q. Have you met Phil. Brice during the past six months?

A. No.

Q. Didn't you meet one of the Brice boys in Indianapolis while you have been away from New York?

A. No.

Q. And divide \$160,000 in cash with him?

A. (Witness laughs.)

Mr. Fallon: His name is Brice, not Price.

Q. Will you answer that? Is there anything to that?

A. No sir.

Q. You say you did not meet either one of them during the past six months; is that right?

A. Yes.

Q. Or Fannie Brice's mother; you did not meet her during the past six months?

A. I cannot answer that, for the same reason.

Q. Would that incriminate you, or tend to?

A. It might.

Q. That would tend to incriminate you? You believe that, do you?

A. I cannot answer that.

235 Q. Well, do you believe that it would incriminate you?

Mr. Fallon: He does not have to say that, if your Honor please.

Mr. Myers: I understand that is just what he has to say.

The Commissioner: Strictly speaking, you have to claim your privilege: That the answer to the question would tend to incriminate

or degrade you to every question. We are allowing you to do that in short form here to-day, in order to save time. You do not want to make any mistake about that.

The Witness: Yes sir.

The Commissioner: It is a great privilege you are claiming, and you must claim it, unless you waive it.

Q. Were you at any gambling houses in Cleveland during the past three months?

A. I cannot answer that, for the same reason.

Q. You believe that would tend to incriminate you?

A. And degrade me.

Q. Were you in any gambling houses anywhere in the United States during the past three months?

A. I cannot answer that, for the same reason.

Q. Were you living on the gains of gambling houses during the past three months?

236 A. Well, I cannot answer that, for the same reason.

Mr. Fallon: As if anyone ever beat a gambling house.

The Commissioner: Wait a minute. That kind of a question is not prohibited under that ruling of Judge Knox.

Q. That would be another crime.

The Commissioner: That is all right; but it is not a Federal crime.

Mr. Fallon: It may be.

The Commissioner: How is it?

Mr. Fallon: It might be a Federal crime; you cannot tell. It may be that gambling is against the Federal Statutes. It might be within a great many different Federal Statutes.

Mr. Myers: That is the Mason case. We will send for it. Have you got the Mason case here, your Honor?

Mr. Fallon: And it might be a source of outlet. It might be a place where these so called assets were distributed.

Mr. Myers: Those are the two very questions that went up to the Supreme Court of the United States, from Alaska, Mason vs. The United States, where the witness was asked those very questions:

237 whether he was in a certain place playing cards, in a certain gambling house in a certain city in Alaska.

He claimed his privilege and was overruled, and the matter went to the United States Supreme Court, and the Court held—we had the case before Judge Knox yesterday—the Court held that that was one of the things that he could not escape from, even though it did involve some other charge.

Mr. Fallon: That is a very different situation. Certainly, so far as the gambling itself is concerned, he could not, unless it is a Federal Statute. Their claim was there, that was under one of the Local Statutes. That case is entirely outside this question. The reason we refuse to answer is that a gambling house named by us might be a possible outlet for assets.

Mr. Myers: Everything is possible.

Mr. Fallon: Certainly the witness knows whether or not he is going to claim his privilege now.

Mr. Myers: The witness is not the judge.

Mr. Fallon: The witness is the solitary judge.

Mr. Myers: The Mason case says that the witness is not the judge; that the Court has got to be satisfied that there is some reasonable foundation and basis to the claim, and that the witness honestly believes in his position.

238 Mr. Fallon: That case is an altogether different case. It deals solely with the gambling situation, and nothing else.

Mr. Myers: The Mason case is right on this memorandum. (Handing Commissioner.)

Mr. Fallon: Let us get the case; your Honor will see in a minute that it is a different case altogether. If you have that case there too, your Honor will find that it was an immunity Statute.

Mr. Myers: Well, how does the Court rule?

The Commissioner: The point is this: That unless you can in some way connect his visit to a gambling house with some violation of a Federal Statute, the Federal Criminal Laws, or the Federal Bankruptcy Act, why he has no privilege concerning his visit to such a gambling house on any other grounds.

Mr. Fallon: No. Perhaps we have not made this quite clear. Suppose the contention would be advanced here subsequently, that this man went to a certain gambling house, and that there he disposed of certain sums of money, which ought to be assets in this proceeding; or in turn, received assets from this gambling house, which it might be contended are secreted here. Has he not the same right to

239 claim his privilege covering the secretion of those assets, as any other assets? Must we tell them that we have assets, by naming a gambling house, which will enable them to go to the gambling house and make their investigation to find out when we were there, and that because we were there we were in a particular city at a particular time? Must we go into those things? It is not just the one fact that is in question. Where is this gambling house? What does it lead to? Does it lead to other things? That is the point that the witness is entitled to know.

Mr. Myers: It leads to ruination.

The Commissioner: Well, I just want to have that brought out. His going to a gambling house and his gambling there, would be a violation of a State Act, but would not give him privilege here at all.

Mr. Fallon: We concede that your Honor is entirely right; that is, on Judge Knox' ruling.

The Commissioner: Now your position is that if he goes to a gambling house, and at that place disposes of receipts, assets, in an unlawful way, that he is committing an offense for which he may be charged with a crime in this Court?

Mr. Fallon: Of course; right here now.

240 The Commissioner: Well, if you take that position, I will have to sustain the objection.

Mr. Myers: I think we have made a fairly good record.

The Commissioner: You can have your record written up, and I will certify it.

Mr. Myers: We would like to have it stand over until Monday at a certain time, say until 2 o'clock. In the meantime there probably will be a decision one way or the other. Will your Honor direct Mr. Arndtstein to appear here at 2 o'clock on Monday?

The Commissioner: You understand that, do you, Mr. Arndtstein? You will be here at 2 o'clock Monday, May 24th?

Mr. Arndtstein: Yes sir, I will be here.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

Special Commissioner's Certificate attached.

Adjourned to Monday, May 24th, 1920, at 2 p. m.

U. S. District Court, S. D. of N. Y. Filed Jun. 1, 1920.

241

In the Matter of NICHOLAS ARNSTEIN.

New York, May 24th, 1920.

Met pursuant to adjournment.

Present:

The Commissioner.

Selden Bacon, Esq., representing the Trustee.

Mr. Fallon.

JULES ARNDTSTEIN recalled.

Examined by Mr. Bacon:

Q. Mr. Arndtstein——

Mr. Fallon (interrupting): If your Honor will bear with me just a moment, may we not put on the record that this examination was completed at the last hearing, subject to a motion that Mr. Myers was to make before Judge Knox, to have the bankrupt declared in contempt for his failure to answer certain questions. Now we have been over all the questions; Mr. Myers stated that he had made a complete survey of the whole situation in those questions; that he had covered all the matters he wanted to inquire about, and he asked leave only to adjourn this examination for the purpose of getting directions from Judge Knox one way or the other. Now surely we are not going to come down here and go all through that formality again. We have a record here that is complete and comprehensive, and upon that record, they were to appear before Judge and make whatever application they deemed necessary. Now under those circumstances, I ask that they go ahead and adopt the proposition that they rested upon at the conclusion of the last hearing: To make any motion that they think they can make, to compel us to answer any question that we claimed we were privileged not to answer. Any questions that will be asked now will merely be

242

a repetition of that which has already been asked; and certainly they have not the right to keep doing that endlessly; there must be an end to this proceeding.

243 Mr. Bacon: I do not understand that there was any such statement, that this examination has been completed; and there is none, that I can find, in the record.

The Commissioner: What was the last?

Mr. Fallon: Here is the last of it: The Commissioner: Now your position is"—

The Commissioner (interrupting): What did Judge Knox say?

Mr. Bacon: They have not been before Judge Knox since.

Mr. Fallon (reading): "Mr. Myers: We would like to have this examination stand over until Monday—say until 2 o'clock. In the meantime there probably will be a decision some way or the other. Will your Honor direct Mr. Arndtstein to appear here at 2 o'clock on Monday?" Now, the understanding was that in accordance with that suggestion, that they had completed the examination, subject only to their appearance before Judge Knox. The Commissioner asked them very particularly if they had not asked a sufficient series of questions to bring out any possible answers that might be proper in this proceeding; and Mr. Myers acquiesced in the suggestion made by the Commissioner, and said that he would take the matter before

244 Judge Knox. But they do not do that; they do not go before Judge Knox; they do not ask for his direction; they do not endeavor to punish us for contempt. They simply talk about all these things, and do nothing.

Mr. Bacon: There is no such statement in this record that this examination was completed. Mr. Myers seems to have said that he thought he had asked enough questions so as to be in a position to present the record to Judge Knox for decision as to whether there were some of these questions that should be answered; or maybe make a general classification. There is nothing in this record about adjourning this examination pending—

The Commissioner (interrupting): I should assume that Judge Knox only passed upon the questions that were brought before him upon that examination. So far as the bankrupt is concerned, the examination was not concluded.

Mr. Fallon: Judge Knox suggested, after he had passed upon at least half of the questions that had been asked in the morning, and had sustained the position of the gentleman who was then acting in this case in your stead—upon that, Mr. Myers said that he would go back and complete the examination so that a record could be made upon which either side could proceed before Judge

245 Knox or any other Judge. Now, we came down here and wasted several hours with repetition and reiteration of the same questions that had been passed upon by Judge Knox, wherein this bankrupt had the right to refuse to answer. Now, the understanding at the last adjournment was that they would go by Friday to Judge Knox—they asked us if we would accept short notice. We said we would accept any notice, so long as they would take the matter up before Judge Knox in a legal, formal way, where

we would have the record upon which to proceed. Now, they have not done any of that; all they have done is talk about it. They did not go ahead and move to punish us for contempt. Every question they can ask, has already been asked here, and this examination was concluded, except for returning in case Judge Knox differed from the decisions made by the Commissioner; and upon which he has already ventured the opinion in advance. Now, under those circumstances we ought not to be brought back here to be brought over those same questions, for absolutely no purpose, and for no good result. This is simply a legal monstrosity, to expect us to accept any such legal position, and to go on here with examination after examination; they can come in here to-morrow and ask these same foolish questions, and the day after, and the day after that, and so on ad infinitum, and will be just wasting our time. They

246 have a complete and comprehensive record, according to their own statement. Why don't they stand on their record and go to some Judge and see what they can do? The reason they do not is because they know they cannot; they know they have not any legal position. We say that the examination was concluded, until they do make some motion before Judge Knox, or receive some directions from him.

Mr. Bacon: This seems to be a voluntary statement by counsel. There is not any such statement in the record. He simply does not know what questions I am going to ask. If this record wants to be put in better shape, then it should be put in better shape now before the matter goes before Judge Knox; with direct refusals of the witness to answer. There are a great many questions asked here, which, instead of having a direction by the Commissioner to answer, with a direct refusal to answer by the witness, he is simply saying: "Same answer," or "I cannot answer for the same reason." That is not sufficient.

The Commissioner: Not technically, no. If you have any line of questions to ask, Mr. Bacon, you may proceed; and if there is any question raised, the whole thing can be threshed out before 247 Judge Knox. It is not my understanding that this examination has been concluded.

Mr. Fallon: Well, it is, according to the record.

The Commissioner: Except for a certain purpose only, as I understand it.

Mr. Bacon: Mr. Myers had no such understanding, that it had been concluded.

Mr. Fallon: Just what makes my friend say it is not his recollection? Here is the record:

"The Commissioner: I would suggest then, Mr. Myers, that if you have covered the general character of questions that were referred to by the Judge this afternoon, covered the general ground in a general way with respect to the questions asked, to give us a basis to work on in the future, that you stop right here, and not make up too large a record for the Judge; that is all; not make up too much for him to read; if you have covered the general points, the general of examination.

"Mr. Fallon: There is no doubt that he has made a general survey of the situation.

"The Commissioner: Now, if there is any other line that you want to take up, general line of examination?

"Mr. Myers: Yes; I think I would like to ask a few more questions.

"The Commissioner: I would say go ahead and finish up those questions this afternoon. In other words, get a typical set of
248 questions, for practically every line of this examination of the witness, before you stop."

Now then, after that he went ahead and asked a few more questions, on that understanding, and stopped the examination so that this record——

The Commissioner (interrupting): What was it adjourned until to-day for then?

Mr. Fallon: Simply to let them appear before the Judge—to let them appear on Friday last, to move to punish us for contempt, or to make us answer.

Mr. Bacon: Where is there reference in the record that it was adjourned to Friday?

Mr. Fallon: Well, there is no question that it was said. If there is any doubt about it, we will testify to it. There were a hundred people here who were present when it was said.

The Commissioner: I do not see any objection, Mr. Fallon, to going on at the present time, and see how far we can get.

Mr. Fallon: Well, we respectfully except to your Honor's ruling, and submit that this matter has been already covered; that we have made a record here, and have already covered this entire gen-
249 eral situation; that they have not gone ahead with their motion to punish for contempt, in accordance with the reason for the adjournment.

The Commissioner: Now proceed, and we will see how far we get.

Q. Mr. Arndtstein, you testified that when you left New York in February last you had \$500?

A. Yes sir.

Q. What have you done with it?

A. I have used it up for general expenses.

Q. Where?

A. Well, I cannot exactly say, where.

Q. How much of it have you spent?

Mr. Fallon: He just said all of it.

A. All of it.

Q. Where did you spend it, in what amounts, and when?

Mr. Fallon: He has just answered that he did not know.

Mr. Bacon: I ask the Commissioner to direct the witness to answer.

The Commissioner: Answer the question, Mr. Arndtstein.

The Witness: In a general way, I spent it.

The Commissioner: State what for, and where.

Mr. Bacon: And when.

The Commissioner: When and where?

250 Mr. Fallon: May we not have one question at a time? If he says when, that is one thing; if he says where, that is another thing.

The Commissioner: Limit it then to when.

Q. Beginning when?

A. I do not know when.

Q. In what amounts?

A. I cannot say the amounts. They were all small.

Q. To whom did you make the payments?

A. I do not know; all strangers.

Q. Where did you make the payments?

Mr. Fallon: We object to that——

The Commissioner (interrupting): No.

Mr. Fallon: I ask your Honor now to advise the witness that he has the right to refuse to answer that question.

The Commissioner: He has been advised. I have advised him twice, that he is not obliged to answer any question that will tend to incriminate or degrade him.

Mr. Bacon: I except to the right to refuse to answer the question on the ground it may degrade him. There is no such right to take exception to on an examination concerning property of a bankrupt.

251 And that on the question of incriminating, the matter of decision does not rest with the witness, but with the Court. In

244 U. S.——

The Commissioner (interrupting): We have not got to that yet, Mr. Bacon.

Mr. Bacon: All right. I ask to have the witness directed to answer the question: Where he spent it.

The Commissioner: Answer the question, Mr. Arndtstein.

The Witness: I did not hear the last question, sir.

Q. Where you spent it.

A. I cannot answer, on the ground that it may incriminate me.

Mr. Bacon: I ask that the Commissioner direct the witness to answer.

answer.

The Commissioner: Answer the question, witness.

The Witness: I cannot answer that, sir, in all due respect to you; it may tend to incriminate me.

The Commissioner: You are directed to answer the question.

Mr. Fallon: Well, he has refused to answer the question, with all due deference.

Q. Do you refuse to answer that question?

A. Yes sir.

Q. You have the knowledge.

A. I cannot answer that, on the same grounds.

252 Mr. Bacon: I ask that the witness be directed to answer that question.

The Commissioner: Answer that question.

The Witness: With all due respect to you, I cannot answer it, for the same reason.

Q. You refuse to answer the question whether or not you have the knowledge where you spent it?

A. Yes sir.

Q. What property had you which you referred to the other day, some seven months prior to the commencement of the proceeding in bankruptcy?

Mr. Fallon: Cannot we have the record read, so that there will be no misapprehension as to what he is talking about? What page is that, Mr. Bacon?

Mr. Bacon: On page 2195. "Now then, your answer is that you have not had any property of any nature, kind or description for a period of at least a year next immediately preceding the filing of the petition in bankruptcy in this case; is that right?"

"A. Just one moment; I am trying to figure the time.

"Q. Yes; take your time.

"A. Perhaps about seven or eight months I should say.

"Q. How?

"A. About seven months.

253 "Q. Then your answer is: That for a period of at least seven months immediately preceding the filing of the petition in bankruptcy in this proceeding, you did not have any property of any nature, kind or description?

"A. Yes sir."

Q. What property did you have at that period, seven or eight months before the filing of the petition in bankruptcy?

Mr. Fallon: If your Honor please, it is very obvious on the face of it, that from that question and answer, he did not say that he did have property, but he said that he did not have property. Now he asks what property it was he did have at the time he didn't have any.

Mr. Bacon: He said he hadn't for a year.

Mr. Fallon: He said he did not have any within seven months; that is all he said. He did not say anything about having any—

Mr. Bacon (interrupting): And that was not correct, that he didn't have any for a year. Now I ask what property he had prior to that seven or eight months' period.

The Commissioner: He is inquiring about property you had seven or eight months ago, prior to that time.

Mr. Fallon: Which the Commissioner also sustained the objection to that very question: What did he have more than seven months ago; what did he have more than a year ago; what did he

254 have more than two, three, four, and five years ago. Now all of that has been covered in this examination. I thought they had something new they wanted to inquire about; not to ask

us what we said we had, when we said we didn't have anything. The answer is that he didn't have anything. Now they ask him what it was he said he had.

(The Commissioner reads the part of the testimony indicated by Mr. Bacon.)

The Commissioner: I will allow that question, Mr. Fallon.

Mr. Fallon: May I ask your Honor what the question is that you are allowing? Is it the question what we had when we said we didn't have anything?

The Commissioner: No. Property prior to seven months ago.

Mr. Fallon: Well, is that question now: What property he had more than seven months ago?

The Commissioner: Yes.

Mr. Fallon: That was asked at least ten times at the last hearing, and the objection sustained.

The Commissioner: I was not here at the last hearing.

255 Mr. Fallon: I understand you were not; but the record is here. We were asked: One year; two years; three, four, and five years.

The Commissioner: Did Judge Knox pass upon that question?

Mr. Fallon: Yes, he passed upon that very question.

Mr. Bacon: Where is that?

Mr. Fallon: In the record here.

Mr. Bacon: Judge Knox passed upon that?

Mr. Fallon: Yes. Judge Knox said all of these rulings were right; that is exactly what he said: That all the Commissioner's rulings were right.

Mr. Bacon: There is no such opinion or statement of Judge Knox in the record.

The Commissioner: I will direct the witness to answer that question now, and you can go before Judge Knox, if necessary.

Q. (Question read as follows:) What property had you which you referred to the other day, some seven months prior to the commencement of the proceeding in bankruptcy?

A. I cannot answer that, for the same reason, sir.

Mr. Bacon: Do you direct the witness to answer, sir?

The Commissioner: Yes.

256 The Witness: I refuse to answer, on the same ground: It may incriminate me.

Q. Of any Federal crime?

A. Both, sir.

Q. What is that?

A. Both State and Federal.

Q. What Federal crime?

Mr. Fallon: If your Honor please, he does not have to specify what crime, or anything of the kind. We refuse to answer, for the same reason. That is a legal proposition.

Mr. Bacon: I undersand that under the decision of the United States Supreme Court, in the case of *Mason vs. the United States*, 244 U. S. The Fifth Amendment does not relieve a witness from answering merely on his own declaration or judgment that an answer may incriminate him; whether he must answer is determinable by the trial court in the exercise of its sound discretion; and unless there is reasonable ground, as distinct from a remote or speculative possibility, to apprehend that a direct answer may prove dangerous to the witness, his answer should be compelled.

Mr. Fallon: Now, has that anything to do with answering what Statute he violated, or thinks the question may bring him in conflict with? On this last question he does claim the violation of a
257 Federal Statute, and here he brings in a case on the question of remoteness.

Mr. Bacon: Now wait a minute. He has declined to state to the Court any Federal crime of which that could possibly tend to convict him. He has made no showing that this answer is likely to tend to convict him of any Federal crime; and Judge Knox ruled the other day that no danger of incrimination upon any State crime was an objection to his being required to answer. Now, under those circumstances, he must make it appear to the Court—he is not to decide the question; he must make it appear to the Court that this question tangles up with some offense under the United States Statutes, and that it may tend to incriminate him under that. He has made no showing. I ask that he be instructed to answer the question.

Mr. Fallon: My friend asks one question, and argues a different point. The question he asked: What Federal Statute do you claim that the answer would conflict with, is a question of law, of course—

Mr. Bacon (interrupting): I will ask that the witness be allowed—

Mr. Fallon (interrupting): Will you refrain from interrupting me long enough to let me talk to the Court—

258 The Commissioner: One at a time.

Mr. Fallon: Or must he talk all the time? He had finished and concluded that which he may call his argument to this Court, and the question that we have before the Court now is: What Federal Statute does he claim his privilege, as bearing upon that question. I say he does not have to answer that.

Mr. Bacon: I admit—

Mr. Fallon (interrupting): You admit he does not have to answer that question. Then why do you ask the question?

Mr. Bacon: I asked the question to see if he would make any such showing; and he declined to make any such showing. And I now ask that he be directed to answer the previous question.

Mr. Fallon: My friend first admits that the witness does not have to answer. Now he asks that the witness be directed to answer something else that he has in his mind. Really, this becomes more ridiculous every step.

Mr. Bacon: If you have the first question read, and then the

second one following it, perhaps you will appreciate what the question is.

Mr. Fallon: We are not talking about the first question. We are only talking about the second question. We refuse to answer, as the question is a grossly improper question, and calls for a conclusion on a question of law, by a lay witness. My friend admits that that is wrong. He has asked your Honor to direct the witness to answer it, and I believe your Honor has directed the witness to answer it; and we decline to answer it.

The Commissioner: Next question.

(Question read as follows: What property did you have at that period, seven or eight months before the filing of the petition in bankruptcy?)

Mr. Bacon: I ask that the witness be instructed to answer that.

The Commissioner: I have instructed the witness to answer, and he has refused to answer.

Q. Does the witness refuse to answer?

A. Yes sir.

Q. Were you, in October 1919, in the possession of any property?

Mr. Fallon: If your Honor please, we have already covered that.

The Commissioner: I will direct the witness to answer that question: If he had any property at that time, October 1919.

260 Mr. Bacon: In his possession.

The Commissioner: In his possession.

The Witness: I cannot answer that, sir, for the same reason.

Mr. Bacon: Does your Honor direct the witness to answer?

The Commissioner: Certainly.

Q. Do you refuse to answer the question?

A. Yes sir.

Q. Were you not in possession of a satchel containing a large amount of securities, at the Pennsylvania Railroad Station, and on a train between New York and Washington, when in possession of that claimed satchel containing such securities, in October 1919?

Mr. Fallon: We make the same objection to that; and, if your Honor please, I will just read to you some of these questions from the old record, to show that we have been all over that—

The Commissioner (interrupting): What is the answer of the witness?

Mr. Fallon: That very question was asked at the last hearing.

The Commissioner: Mr. Fallon, what is the answer of the witness?

261 Mr. Fallon: The answer is, that we have the right, in addition to the personal privilege, to object to anything that is immaterial, or that which has already been covered. Now on page 2199 of the old record we have this series of questions: "Q. Of what did this property consist which you say you had seven months before the filing of the petition in bankruptcy?" So we had all of this

before. And this very question now, about a satchel containing something, was asked at the last hearing. So that in addition to any other matter, we object to it for the reason it has already been covered, and is now immaterial.

The Commissioner: I am not familiar with the last record; I cannot answer that question.

Mr. Fallon: That is not our fault.

Mr. Bacon: He has not answered that question.

The Commissioner: I have not heard the answer of the witness of any kind.

Mr. Fallon: It was refused to be answered. That is a legal answer.

Mr. Bacon: No, that is not a legal answer.

Mr. Fallon: Isn't it?

Mr. Bacon: No.

Mr. Fallon: We will take your opinion on the matter, 262 without question. But it was asked before, and we are just repeating the same thing all over again. I do not know whether they think your Honor is going to reverse the other Commissioner—

The Commissioner (interrupting): One moment. It is unfortunate I was not here at the last hearing. I am not familiar with what happened then.

Mr. Fallon: Why not have that Commissioner here who is familiar with it, and who knows all about this situation? Just because he decided the way the law reads, for some reason he is not here. It seems to me we ought to have this matter decided on that record, and not by two records. We have a record here where all these questions were asked.

The Commissioner: It is not necessary to have two records at all.

Mr. Fallon: We are getting the exact same questions in both records.

The Commissioner: We have not got an answer of the witness.

Mr. Fallon: Here is where he sustained the objection to that very question.

The Commissioner: If it was sustained, I will follow it.

263 Mr. Fallon: Here it is sustained, about the seven months.

Mr. Bacon: That question certainly has not been asked.

Mr. Fallon: Here is about the seven months, that your Honor has just passed upon:

"Q. Of what did this property consist which you say you had seven months before the filing of the petition in bankruptcy?"

"Mr. Fallon: That is the same question * * * His answer was that he didn't have any.

"Mr. Myers: Oh no."

Then the Commissioner said "You refused to answer that question on what ground?"

"The Witness: On the ground it may incriminate me, sir.

"The Commissioner: May incriminate or degrade you?"

"The Witness: Yes sir.

"The Commissioner: I shall have to sustain the objection."

That is the same question we have just had a different ruling on; for we had the same thing right here.

Mr. Bacon: I am quite sure that question was not asked.

Mr. Fallon: Here is part of it. After a long list of names, asking him if he knew nearly everyone in the World since the death of the late deceased Theodore Roosevelt:

264 "Q. Did you ever have any business dealings with him?"

That refers to Druckker and to Winkler, and everybody they named.

"A. I cannot answer that, for the same reason.

"Q. Did you ever hand him any securities, directly or indirectly?

"A. I cannot answer that, for the same reason.

"Q. Or receive any money from him directly or indirectly?

"A. I cannot answer that, for the same reason.

"Q. Did you meet him in Chicago recently?"

That applies to Ecremont.

"A. I cannot answer that, for the same reason.

"Q. Did you meet Phil. Kastel in Chicago recently?

"A. I cannot answer that, for the same reason.

"Q. Did you meet Charles Druckker in Chicago recently?

"A. I cannot answer that, for the same reason.

"Q. Did you meet Ed. Winkler in Chicago recently?

"A. I cannot answer that, for the same reason.

"Q. Did you ever, in the past three months, hand any one of those persons any securities of any nature, kind or description?"

The same question.

"A. I cannot answer that, for the same reason.

"Q. Or receive any money from them?

"A. I cannot answer that, for the same reason.

"Q. Do you know Ed. Furey?

"A. I cannot answer that, for the same reason.

"Q. Did you ever have any business dealings of any kind with him?

"A. I cannot answer that, for the same reason.

265 "Q. Did you ever receive any property from him of any nature, kind or description?

"A. I cannot answer that, for the same reason."

Now, every one of those objections was sustained.

The Commissioner: The point of the thing, Mr. Fallon, is this: He is asking him whether he had any particular property at a particular time.

Mr. Fallon: All of that was covered, about every one of these people, and every one of those objections was sustained.

Mr. Bacon: Mr. Fallon is only saying that there was any such question asked. Find it.

Mr. Fallon: Don't challenge me to do anything, or I will read the whole record. Now the point about it is——

Mr. Bacon (interrupting): I ask that either he be quiet or he find that question.

Mr. Fallon: The point about it is this: That every question that has been asked in this proceeding has been thoroughly and exhaustively covered in this record. Now we are going to go back over those same questions.

The Commissioner: There is one question not answered now: If he had certain property at a certain time.

Mr. Fallon: That very question he asked about securities in a bag, if I can find it—I will find it in a minute, if we really want it

266 The Commissioner: You will save time, Mr. Fallon, if you let the witness answer the question.

Mr. Fallon: It is not a question of saving time. We have as much time to waste as the rest.

The Commissioner: Not only save time, but save your breath as well as somebody else's. What is your answer, witness?

The Witness: I will refuse to answer, on the same ground: It may incriminate me.

The Commissioner: Go on, Mr. Bacon.

Mr. Bacon: I ask the Court to direct the witness to answer.

The Commissioner: No, I will not. I sustain the objection.

Mr. Bacon: I will note an exception.

Q. Have you any property, besides the \$500 you mentioned, within the last seven months preceding the petition in bankruptcy?

Mr. Fallon: If your Honor please, I have just found that question, if there is any dispute about it: "Q. Do you remember receiving a satchel full of stolen securities from Joe Gluck in the Penn-
267 sylvania Station on October 12th last?" That is the very same question.

Mr. Bacon: That is not the same question.

Mr. Fallon: That is the very same question; refers to the same transaction.

Mr. Bacon: I did not ask him anything about any stolen securities.

Mr. Fallon: Well, a satchel full of securities. The same question; no doubt about it at all.

Mr. Bacon: I asked him simply if he had a satchel full of securities; that is a very different question.

(Question read as follows: Were you not in possession of a satchel containing a large amount of securities, at the Pennsylvania Railroad Station, and on a train between New York and Washington, when in possession of that claimed satchel containing such securities, in October 1919?)

Mr. Fallon: Do they claim that question has not been answered before, and ruled upon?

The Commissioner: My recollection is that that has been passed upon before, and the objection sustained.

The Witness: I answered that the last time, sir.

The Commissioner: Practically the same question.

268 Mr. Bacon: But there was no formal refusal to answer. I want to get it more definitely on the record. The witness appears to have answered it two different ways. The question was asked, and he answered he did not have any property. And then later he said he did have some money.

Mr. Fallon: Will you show us that in the record please?

Mr. Bacon: Yes, certainly.

Mr. Fallon: What pages?

Mr. Bacon: At the top of page 2196, and near the bottom of page 2197.

Mr. Fallon: So you see it has already been answered; he has found it himself.

Mr. Bacon: It has already been answered two ways. Now I want a direct answer.

The Commissioner: What is your answer, Mr. Witness?

Mr. Bacon: The first answer was no, he has not any; and the second answer was he had some money.

Mr. Fallon: And then he explained his answer by saying he had a few dollars here and there. Are we going all over that again? Admittedly, that is on the record.

Mr. Bacon: I guess we will.

269 Mr. Fallon: I guess we will if the Commissioner says we have to. But you are not the Commissioner yet.

Mr. Bacon: I guess we will go on as long as I ask questions.

Mr. Fallon: May we have a ruling on that which has been covered twice?

The Commissioner: If he wants to get it a second time, let him go over it. You will get along a great deal faster if you do not argue on the objection every time. Mr. Bacon evidently thinks that the questions and answers and directions have not been as sharply defined on the record as they ought to be, in his judgment; that is the reason, as I understand it?

Mr. Bacon: Very largely that, sir.

Mr. Fallon: I suppose your Honor, that Mr. Bacon is right, and we are all wrong, and the other Commissioner as well?

The Commissioner: Oh no. But perhaps he wants to get a better record than what Mr. Myers got, as I understand it.

Mr. Fallon: Of course, I could find fault with Mr. Myers record too.

The Commissioner: Then on that point you both agree.

270 Mr. Fallon: If we both agree that Mr. Myers is wrong, what are we doing here? They say now his record is not right.

Mr. Bacon: I do not say that.

The Commissioner: What is the question now?

(Question read.)

The Witness: I cannot answer that, sir, for the same reason.

The Commissioner: Was that question passed on, Mr. Fallon?

Mr. Fallon: Of course; it has been asked at least half a dozen times.

The Commissioner: Was there any direction by the Judge to answer?

Mr. Bacon: There is no direction either way. The witness had answered first yes, and then no. Now, I want to find out what property he had.

The Commissioner: Has that question been passed on by Judge Knox?

Mr. Fallon: Oh, Judge Knox passed on that. He said he did not have to disclose what his assets were. We are simply wasting time here; that is all.

Mr. Bacon: Nonsense.

The Commissioner: Is there any written memorandum by Judge Knox?

Mr. Fallon: No; we had a long discussion up there.

The Commissioner: No written memorandum?

Mr. Fallon: Then we can follow the matter through. We went to Judge Knox, after we had proceeded with the case for the entire morning, and those questions which were asked up to that time were read to Judge Knox; and Mr. Tallman asked Judge Knox if his rulings were substantially correct, and Judge Knox said that he would not disagree with Mr. Tallman on any of those rulings; and told Mr. Myers that he was very unfortunately in a position from which no one could extricate him. Then we came back and proceeded with the farce. And about half the record that we used that afternoon shows just a repetition of all those same questions and answers, with the same rulings.

Mr. Bacon: Did it consist of Mr. Fallon talking? I ask that the witness be directed to answer this question.

The Commissioner: If that question has not been asked and passed upon by Judge Knox, I will pass upon it now.

Mr. Fallon: Well, it has been asked and passed upon.

Mr. Bacon: I say it has been asked and answered differently.

The Commissioner: I direct the witness to answer. Now, you can refuse to answer if you want to.

The Witness: I refuse to answer, on the same ground.

The Commissioner: On what grounds do you refuse to answer? That it may tend to incriminate you?

The Witness: Yes sir.

Q. In the Federal Court?

A. Both, sir.

Mr. Fallon: Don't answer that. May we have a ruling on one question, without this man asking another? He asked for a ruling, and then he proceeded to ask another question. I do not know whether he is just impatient, or what the trouble is.

Mr. Bacon: May I suggest, Mr. Commissioner, that both the Court and I are entitled to a little courtesy.

The Commissioner: We will get along much faster with less argument.

Mr. Fallon: May we have a ruling?

The Commissioner: He is directed to answer, and he has declined.

Q. Do you decline to answer the question?

A. Yes, I did so.

Q. Aside from the \$500 you spoke of, have you had any
273 money or property in your possession, or held by you, since
the filing of the bankrupt petition?

A. I answered that at the last hearing, sir.

Mr. Fallon: Will your Honor rule on that?

The Commissioner: What is the question? I have not heard
any answer.

Mr. Fallon: Yes; there is a question, and we refuse to answer; but
may we have a ruling on that direction?

The Commissioner: I have not heard any refusal to answer.

Mr. Fallon: He refuses to answer.

Q. On what ground?

A. The same ground, sir: Tend to incriminate me.

Q. That it may tend to incriminate you?

A. Yes sir.

Mr. Bacon: I ask that the witness be instructed to answer.

The Commissioner: Answer the question.

The Witness: I am sorry, sir, I cannot.

Q. You refuse to answer?

A. Yes sir.

Q. When did you first hear of the pendency of this bankruptcy
proceeding?

A. I beg pardon, sir?

Q. When did you first hear of the pendency of this bank-
274 ruptcy proceeding against you?

A. I do not know, sir.

Q. You were served with the papers before you left New York,
were you not?

A. No.

Q. What is that?

A. No sir.

Q. You were not served with any papers in this proceeding before
leaving New York?

A. No sir.

Q. In this bankruptcy proceeding?

A. I have not been served with any papers.

Q. Did you instruct Messrs. Fallon & McGee to appear for you
in this bankruptcy proceeding?

Mr. Fallon: That is privileged, if your Honor please, in addition
to the other objection; that is privileged, what he instructed his at-
torneys to do.

The Commissioner: Oh no.

Mr. Fallon: Oh yes.

The Commissioner: Absolutely not.

Mr. Fallon: Well, we will contend it is.

The Commissioner: Your contention is not recognized at all.

Mr. Fallon: That was a communication between attorney and client.

The Commissioner: I will certainly direct the witness to
275 answer that.

Mr. Fallon: We make the same objection as before.

The Commissioner: That question has been passed upon several times the other way.

Mr. Fallon: Well, I know; so have a good many others about here.

The Commissioner: Answer the question, witness.

The Witness: I refuse to answer, sir, on the same ground.

The Commissioner: On what ground?

The Witness: The same ground, sir.

The Commissioner: Ground, what?

The Witness: It may incriminate me, sir.

The Commissioner: What; that you retained counsel?

(No response.)

The Commissioner: Mr. Fallon, you will kindly refrain.

Mr. Fallon: He has the right to say yes.

The Commissioner: You have not the right to tell him what to say.

Mr. Fallon: I did not know that your Honor was conducting this examination.

The Commissioner: Well, I am certainly presiding at this
276 examination, and you will have to do what I say, or he will have to obtain other counsel.

Mr. Fallon: That is perfectly all right; we may do that too. But in the meantime, while I am here, this witness is going to be protected.

The Commissioner: He is not going to be protected in the manner you seem to be protecting him.

Mr. Bacon: I will ask the Commissioner to state on the record what it was that Mr. Fallon did just then, that drew forth this comment from the Commissioner, so that we may have it——

Mr. Fallon (interrupting): I ask that, if he does, I will be allowed to examine the Commissioner.

Mr. Bacon (continuing): —upon application to punish for contempt. Because I intend to make application also to punish Mr. Fallon for contempt.

Mr. Fallon: My friends have been making so many applications that are never passed on.

Mr. Bacon: I do not make any applications that are not acted upon, as you will presently find, the moment I make it. I ask the Commissioner to state what it was that he observed.

The Commissioner: I could not hear what he said, but
277 the motion of his lips indicated to my mind that he said not to answer.

Mr. Bacon: While the witness was on the stand.

The Commissioner: Now, what is the answer, Mr. Arndtstein?

The Witness: I cannot answer, sir, for the same reason: It may incriminate me.

Q. You refuse to answer?

A. Yes sir.

Q. When did you first hear of there being an adjudication in bankruptcy in this case?

A. I do not know, sir.

Q. Did you hear of it before you returned to New York a week ago last Saturday?

A. Yes sir.

Q. How long before that?

A. I do not know, sir.

Q. A week before that?

A. I could not say, sir.

Q. Was it as much as a week before that?

A. I could not say exactly when; I have no idea. I read it from the newspapers.

Q. At the time the adjudication occurred?

A. I do not know when it occurred.

Q. When you read it in the newspapers, was it reported as something that had just occurred?

A. I do not know, sir.

Q. You stated the other day here that you had some talk
278 with a reporter of a newspaper, and that you told him that you came to give yourself up, to surrender; that you had been trying to do so for the past three months, but that Mr. Myers had obstructed every passage that you tried to make in regard to the bond. What was your information on that subject connected with Mr. Myers' appearance in this bankruptcy proceeding, and the adjudication in bankruptcy?

A. That was based upon what I read in the newspaper.

Q. Will you answer the question please?

A. I cannot answer any further than that.

Q. How did you think Mr. Myers was obstructing it unless there had been an adjudication in bankruptcy?

Mr. Fallon: Is he arguing with the witness, or asking him a question? Now I object to any question that is argument.

The Commissioner: That is argument.

Mr. Fallon: That is clearly argument.

The Commissioner: Objection sustained.

Mr. Bacon: Exception.

Q. In what capacity did you understand Mr. Myers was obstructing every passage that you tried to make?

Mr. Fallon: Has that anything to do with the bankruptcy, your Honor? That is absolutely immaterial.

279 The Commissioner: No. Objection sustained.

Mr. Bacon: Exception.

Q. From what newspaper did you receive your information of the adjudication of the bankruptcy against you?

A. I do not know which one.

Q. A New York newspaper?

A. I could not say, sir.

Q. But you did learn of that before you returned to this City?

Mr. Fallon: He has already said yes, your Honor. I do not know why we have to ask each question three times.

Mr. Bacon: Because we cannot trust the witness to answer twice the same way.

Mr. Fallon: We are sorry you cannot——

The Commissioner (interrupting:) One moment, Mr. Fallon. Less argument and more questions. Next question.

Mr. Bacon: I want to get definitely from the witness, that he did know about the adjudication in bankruptcy before he returned to this City a week ago last Saturday.

The Witness: I cannot fix any time, sir; I do not know.

Q. You do not know whether you knew of it before you came back to the City?

280 A. I knew of it before I came back, but I do not know what time.

Q. That was what I asked you. You did know of it before you come back to the City; you are positive of that?

A. I just answered, sir: Yes.

Q. Have you filed any schedules in bankruptcy?

A. I beg pardon?

Q. (Question repeated.)

A. I do not know just what you mean by that.

Mr. Fallon: Is not that a matter of record, if your Honor please? Why does he have to go over these things that everyone knows?

Mr. Bacon: The man said he does not know.

Q. Have you prepared any schedules in your bankruptcy?

The Commissioner: A list of your debts; liabilities and assets.

The Witness: In what way, sir?

Q. Have you prepared any list of your assets and liabilities in this bankruptcy proceeding?

A. I have not prepared anything, sir, at no time.

Q. Are you at work preparing them?

A. No sir.

Q. Have you made any effort so far to prepare any such schedules of your assets and liabilities in this bankruptcy proceeding?

A. No sir.

281 Mr. Bacon: If your Honor please, I do not know that the record can be properly certified in its present condition, and I will therefore repeat certain questions that were apparently ruled on by the former Commissioner, while Mr. Tallman was acting as Commissioner, which rulings Mr. Myers took exception to; and I think——

Mr. Fallon (interrupting:) Did not your Honor say that only additional things would be gone into now?

(Argument off the record—upon instructions of the Commissioner—)

Q. Have you had, Mr. Arndtstein, any stocks or bonds during the past year, in your name or in your possession or under your control?

A. No sir.

Mr. Fallon: No; now wait a minute; just a minute. May we see just where this is? We refused to answer that the last time, and the objection was sustained.

Mr. Bacon: The witness has now answered the question. Now I will repeat the question.

Q. Did you not have in your possession in October 1919, at the Pennsylvania Railroad Station in New York City, and on the train between New York and Washington, a satchel full of securities?

A. I refuse to answer that, sir, on the same ground: It may incriminate me.

282 Mr. Bacon: I ask that he be instructed to answer, the witness having testified that he had no stocks or bonds in his possession or under his control, and therefore has opened the door and is now bound to disclose everything relating to that question.

Mr. Fallon: Will your Honor please rule on that?

Mr. Bacon: What he testified is that he did not have any in his possession. I then asked him if he did not have certain property.

Mr. Fallon: And he refuses to answer.

The Commissioner: He refused to answer, on the ground it may incriminate him.

Mr. Fallon: My friend talks about opening the door on the question of incrimination. May we go ahead and have a ruling, your Honor? Because that is so elementary it is not worth a question.

The Commissioner: Sustained.

Mr. Bacon: Exception. I ask your Honor to instruct the witness to answer.

The Commissioner: I decline to do so.

Mr. Bacon: I except.

Q. Mr. Arndtstein, have you had access to any safe deposit box during the past year?

283 Mr. Fallon: If your Honor please, we refused to answer that, and the objection was sustained.

The Commissioner: Objection sustained.

Mr. Bacon: I will take exception; and I will ask the Commissioner to instruct the witness to answer that question.

The Commissioner: I decline to do so.

Mr. Bacon: Note my exception.

Q. Have you had any bank account anywhere in the United States during the past year?

Mr. Fallon: Now that also was asked, and the same ruling was had.

The Commissioner: He declined to answer, and the objection was sustained.

Mr. Bacon: And I except.

Q. Have you had any safe deposit box either in your name or in the name of any other person, to which you had access, anywhere in the United States, during the past year?

Mr. Fallon: That was also asked and answered, and the objection sustained.

The Commissioner: I decline to make a further direction.

284 Mr. Bacon: I except.

Q. You testified on your former examination that you had an account in the Pacific Bank, did you not, page 13 (2076) of the record?

A. (No answer.)

The Commissioner: Mr. Arndtstein, you know whether you did or not.

The Witness: Yes sir.

Q. Has that bank account been opened at any time during the past year?

A. I have not been near the bank in so long, that I do not know, sir.

Q. How large a balance did you ever have in that bank account?

A. I could not say, sir.

Q. What is the largest you recall?

Mr. Fallon: If your Honor please, that is the very question that was asked at the last hearing: "Have you had any bank accounts anywhere in the United States during the past year?" Now, my friend finds fault with Mr. Myers' record, and of course he is justified—

The Commissioner (interrupting): Mr. Fallon, the witness testified he had an account in the Pacific Bank.

Mr. Fallon: That is true; then after that we did answer that, of course. But then they tried to go into what it constituted;

285 what was in it; and then of course it became objectionable.

That very question was gone into in just that way: First, did we have it; and then, the objection sustained, what it constituted. Now my friend wants to amend the record; but to amend it, he asks the same question. I do not want to justify anything Mr. Myers did, but my friend does not seem to be in advance of it.

Mr. Bacon: I ask that the witness be instructed to answer.

The Commissioner: No; I decline to so instruct.

Mr. Bacon: I except. Page 2166: "What have been the nature of your dealings with Nick Cohen? A. I cannot answer, for the same reason." I will ask the Commissioner to direct the witness to answer that question.

Mr. Fallon: There again the objection was sustained.

The Commissioner: I decline to do so.

Mr. Bacon: Exception. I ask the Commissioner to direct the witness to answer the question: "What dealings have you had with Nick Cohen during the past year? A. I cannot answer, for the same reason." I ask the Commissioner to instruct the witness to answer.

The Commissioner: I decline to instruct him so to answer.

286 Mr. Bacon: Exception.

Mr. Fallon: Won't your Honor request Mr. Bacon not to cover the same ground over and over again? He is asking exactly the same questions as are in the record.

The Commissioner: As I have said before, and perhaps twice before, or three times: The object of Mr. Bacon is to put upon the record the fact that the witness has specifically refused to answer—

Mr. Fallon (interrupting): But the same questions are already on the record.

The Commissioner: He wants to repeat the questions. It is simply wasting time, Mr. Fallon—

Mr. Fallon (interrupting): I agree it is a waste of time.

The Commissioner: How many more questions are there, about, Mr. Bacon?

Mr. Bacon: There are a great many of these particular questions. Mr. Tallman said: "Consider it the same ruling on all these." I do not want your Honor to make a different ruling from what he did. He apparently declined to put the question in, but it is not definitely shown.

The Commissioner: What is the question now?

287 Mr. Bacon: The question I have just asked: "What dealings have you had with Nick Cohen during the past year?" And the answer was "I cannot answer, for the same reason."

The Commissioner: I decline to instruct the witness to answer.

Mr. Bacon: I except to your Honor's ruling. "Q. Do you remember going to Washington, D. C. with Nick Cohen on or about October 12th last?" Being the bottom question on that same page. The witness then answered as before. I ask the Court to instruct the witness to answer.

The Commissioner: I decline to do so.

Mr. Bacon: Exception. "Q. Do you remember meeting Joe Gluck and going with him at the same time?" The witness answered "I cannot answer, for the same reason." I will ask your Honor to direct him to answer.

The Commissioner: I decline to do so.

Mr. Bacon: Exception. "Do you remember meeting David Sullivan in the Pennsylvania Station at the same time? A. I cannot answer, for the same reason." I ask the Commissioner to instruct the witness to answer.

The Commissioner: I decline to do so.

288 Mr. Bacon: Exception. "Do you remember meeting David Sullivan in Washington, D. C. on or about October 13th last? A. I cannot answer, for the same reason." I will ask the Commissioner to instruct the witness to answer.

The Commissioner: I decline to do so.

Mr. Bacon: Exception.

Q. Did you receive any securities of any nature, kind or description from Joe Gluck or Nick Cohen in Baltimore, Maryland, or New York City, Philadelphia, or Boston, in October or November last?

Mr. Fallon: That is the same question.

Mr. Bacon: That is practically the same question.

The Commissioner: What is your answer, Mr. Arndtstein?

The Witness: I refuse to answer, sir, on the same ground. It may incriminate me.

Mr. Bacon: I ask the Commissioner to instruct the witness to answer.

The Commissioner: I decline to do so.

Mr. Bacon: Exception.

Q. Do you know Joseph Gluck, Irving Gluck, Charles Drucker, Eddie Winkler, or any of them?

Mr. Fallon: Objection was also sustained to that.

289 Mr. Bacon: "No; I do not want to do that." The Commissioner said "I do not think that his merely knowing a person will tend to incriminate or degrade him."

Mr. Fallon: Then, if you notice, we had that very question before Judge Knox, and had asked him that very question, and Judge Knox said it was a proper ruling; he had the right to claim his privilege to that question; and right here in this record it is sustained.

(Mr. Bacon read to the Commissioner the instructions of Judge Knox contained on pages 2177 and 2178 of the record.)

Mr. Fallon: Those questions are on page 2170 of the record; and the objections to them were sustained; and that very part of the record was read to Judge Knox. The record does not pretend to show what took place before Judge Knox. There are these questions and the objections sustained, page 2170: "Do you know Joseph Gluck? A. I cannot answer, for the same reason. Q. Do you know Irving Gluck?" And so on. He sustained the objection, and it is right here, right on that page.

Mr. Bacon: Where? There does not seem to be any ruling on it, except the statement by the Commissioner: "These questions
290 are in the same class as the question that was asked in the first place, about Nick Cohen. I do not think that his merely knowing a person will tend to incriminate or degrade him."

Mr. Fallon: You will find them all sustained right on the record. The Commissioner said that every objection was sustained. We went on on that basis. It is right in this record. And there are these questions: "Do you know Joseph Gluck? A. I cannot answer, for the same reason." We were not ordered to answer. He sustained every objection to these questions.

Mr. Bacon: There does not seem to be any ruling on that, and I now ask for a ruling.

The Commissioner: Does he decline to answer it? Does the record show he declines to answer?

Mr. Bacon: The record shows that he did say: "I cannot answer, for the same reason."

Mr. Fallon: "I cannot answer for the same reason." That means he claims his privilege.

The Commissioner: I decline to instruct him to answer.

Mr. Bacon: We except. The question is asked by Mr. Myers: "Have you any money in your possession or under your control?"

A. I cannot answer that, on the ground it may incriminate me." The Commissioner held it was quite a proper question; and his answer was: "Yes, I have." The question was asked: "How much?"

Mr. Fallon: What page is that, Mr. Bacon?

Mr. Bacon: Page 2178. The Commissioner directed him to answer—pardon me; in that particular case he did so direct the witness to answer, and his refusal is on the record. The question was then asked: "Where did you get the money?" The answer was: "I cannot say, for the same reason." The Commissioner sustained the objection to that question; and I will ask your Honor to instruct the witness to answer.

The Commissioner: I decline so to do.

Mr. Bacon: I except to the ruling. The question was also asked: "Did you get it this year?" Referring to the same money. The answer was: "I cannot say, for the same reason." The Commissioner finally held that that question came within the class of questions which the witness could refuse to answer. I ask your Honor to instruct the witness to answer.

The Commissioner: I decline so to do.

Mr. Bacon: I note an exception. I will ask the question when the witness did receive this money. There are a number of questions in here, whether he received it at such a time, or such another time, and they were all excluded. I will now ask the question:

Q. When, Mr. Arndtstein, did you get that money?

The Commissioner: What is your answer.

A. I do not know, sir.

Q. That is the same question, in substance, that you refused to answer on the ground that it might incriminate you?

A. Yes sir.

Mr. Fallon: Now he is arguing with the witness. Now, asking him whether that is the same question in substance; that is a question of argument. That is a matter that the Court should judge.

The Commissioner: You will hear the next question, Mr. Fallon.

Q. Mr. Arndtstein, have you delivered any securities to any person, within four months next preceding the filing of the bankrupt petition?

Mr. Fallon: Now that also was covered, Mr. Bacon, I take it?

Mr. Bacon: I do not think delivery is covered.

Mr. Fallon: What is that?

Mr. Bacon: I do not think the question of delivery is covered.

Mr. Fallon: Well, he said "give" instead of "deliver." That question was answered.

The Commissioner: What is your answer, Mr. Arndtstein?

The Witness: I refuse to answer, sir, on the same ground: I may incriminate me.

Mr. Bacon: I ask the Court to instruct the witness to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Note my exception.

Q. In answer to the question whether you had any property of any nature, kind or description since the filing of the petition in bankruptcy in this proceeding, you answered: "Yes; I have had a little money from time to time." From what source did you get that money?

Mr. Fallon: We also refused to answer that.

The Commissioner: One moment, Mr. Fallon.

Mr. Fallon: I want your Honor to be apprised of the record. We also refused to answer that question, and the objection was sustained.

The Commissioner: The witness can answer. What is your answer Mr. Arndtstein?

294 The Witness: I cannot answer that, sir, for the same reason.

Mr. Bacon: I will ask the Commissioner to instruct the witness to answer.

The Commissioner: I decline to do so.

Mr. Bacon: Note an exception.

Q. Have you had in your possession at any time since the filing of the petition in bankruptcy, any diamonds or jewelry?

A. I cannot answer that, for the same reason.

Mr. Bacon: I ask that he be instructed to answer.

Mr. Fallon: That very question was asked——

The Commissioner (interrupting): I decline so to do.

Mr. Bacon: Exception.

The Commissioner: Mr. Fallon, if you wait until some objection is made, then will be the time——

Mr. Fallon (interrupting): Your Honor may get the impression that these questions were not all asked before? You understand that all of these questions were asked before?

The Commissioner: I am not so easily impressed as all that.

Mr. Fallon: Well, I am glad that that is so.

Mr. Bacon: These two questions were put to him, and ruling made by the Commissioner, who sustained the objections to the questions. I will ask your Honor to instruct the witness to answer the question: "Have you had any stocks or bonds during the past year, either in your name or possession, or under your control?"

The Commissioner: I decline so to do.

Mr. Bacon: I except. Also the question: "Have you had access to any safe deposit boxes during the past year?" I ask your Honor to instruct the witness to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Note my exception to that refusal to direct. The question was asked of the witness: "Did you ever receive any property of any nature, kind or description from Joseph Gluck?" He said he could not answer that, for the same reason; and the Commissioner sustained that objection: "Same ruling and exception." I ask your Honor to instruct the witness to answer that.

The Commissioner: I decline so to do.

Mr. Bacon: I except to the refusal to direct. I ask the Commissioner to instruct the witness to answer the question whether he knows Philip Kastel.

The Commissioner: I decline so to do.

296 Mr. Bacon: Exception. I ask the Court to direct the witness to answer whether he had been in communication with Philip Kastel during the past six months.

The Commissioner: I decline so to do.

Mr. Bacon: Exception. I ask the Court to instruct the witness to answer the question whether he has been in communication with Joseph Gluck during the past year.

The Commissioner: I decline so to do.

Mr. Bacon: Exception. I ask the witness whether he delivered any securities to Nick Cohen at any time in October, November or December 1919, or January 1920.

The Commissioner: Has that question been already asked?

Mr. Fallon: That question is in there: Gluck, Cohen, Philip Kastel, Ecremont. I am sure that particular question has been asked.

The Commissioner: Well, put the question, and let him decline to answer, and I will decline to instruct him to answer.

The Witness: I refuse to answer, sir, on the same ground.

Mr. Bacon: I will ask your Honor to instruct the witness to answer.

The Commissioner: I decline so to do.

297 Mr. Bacon: Exception. I ask the Commissioner to instruct the witness to answer the question whether he knows Ed. Winkler.

The Commissioner: I decline so to do.

Mr. Bacon: Exception. I ask the Commissioner to instruct the witness to answer the question how long he has known Ed. Winkler.

The Commissioner: I decline so to do.

Mr. Bacon: Exception. I ask the Commissioner to instruct the witness to answer when he saw Ed. Winkler last.

The Commissioner: I decline so to do.

Mr. Bacon: Exception. I ask the Commissioner to instruct the witness to answer the question where did he see Ed. Winkler last.

The Commissioner: I decline so to do.

Mr. Bacon: Exception. I ask the Commissioner to instruct the witness to answer the question, did he ever receive any property from Ed. Winkler.

The Commissioner: I decline so to do.

Mr. Bacon: Exception. I ask the witness whether he transferred or delivered any securities to Nick Cohen since the 1st of October last.

The Commissioner: What is your answer?

298 The Witness: I just answered that, sir, a few moments ago. I refused to answer, on the same ground, sir: It may incriminate me.

Mr. Bacon: I ask the Court to direct the witness to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. Did you deliver any securities, or send any securities to David Sullivan, since October 1st, 1919?

A. I refuse to answer, on the same ground, sir.

Mr. Bacon: I ask the Commissioner to instruct the witness to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. Had you any business transactions with David Sullivan since October 1st 1919?

A. I refuse to answer, for the same reason.

Mr. Bacon: I ask the Commissioner to instruct the witness to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. Did you ever receive any property from David Sullivan since October 1st 1919?

299 A. I refuse to answer, sir, for the same reason.

Mr. Bacon: I ask the Commissioner to instruct the witness to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. Do you now own any real estate?

A. No sir.

Q. Have you owned any since the 1st of October 1919, at any time?

A. No sir.

Q. Did you have any business transactions with W. W. Easterday at any time since the 1st of October 1919?

A. I cannot answer, sir, for the same reason.

Mr. Bacon: I ask the Commissioner to instruct the witness to answer that question.

The Commissioner: I decline to do so.

Mr. Bacon: Exception.

Q. Did you ever receive any property from W. W. Easterday?

A. I cannot answer, sir, for the same reason.

Q. Do you refuse to answer?

A. Yes sir, for the same reason.

Mr. Bacon: I will ask the Commissioner to instruct the witness to answer.

The Commissioner: I decline to do so.

Mr. Bacon: Exception.

300 Q. Did you ever give any property, or hand over any property to W. W. Easterday, since the 1st of October 1919?

A. I refuse to answer that, for the same reason, sir.

Mr. Bacon: I ask the Commissioner to instruct the witness to answer.

The Commissioner: I decline to do so.

Mr. Bacon: Exception.

Q. Did you ever receive any money from W. W. Easterday since the 1st of October 1919?

A. I refuse to answer, for the same reason.

Mr. Bacon: I ask the Commissioner to instruct the witness to answer.

The Commissioner: I decline to do so.

Mr. Bacon: Exception.

Q. Did you at any time in last October or November meet David Sullivan?

A. I refuse to answer, sir, for the same reason.

Mr. Bacon: I ask that he be instructed to answer.

The Commissioner: I decline to do so.

Mr. Bacon: Exception.

Q. What banks, trust companies, or safe deposit companies have you been to in the past three months?

A. I refuse to answer, sir, for the same reason.

301 Mr. Bacon: I ask the Commissioner to direct the witness to answer.

The Commissioner: I decline to do so.

Mr. Bacon: Exception.

Q. Did you, since the 1st of October 1919, place any securities in any safe deposit box anywhere?

A. I refuse to answer, sir, for the same reason.

Mr. Bacon: I ask the Court to instruct the witness to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. Have you at any time since the 1st of October 1919 sold or transferred any stocks or bonds?

A. I refuse to answer, sir, for the same reason.

Mr. Bacon: I ask the Commissioner to instruct him to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. Have you received, since the 1st of October 1919, any money purporting to be the proceeds of any stocks or bonds, and if so, in what amount?

A. I refuse to answer, sir, for the same reason.

Mr. Bacon: I ask the Commissioner to instruct the witness
302 to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. Do you refuse to state whether you know Nate Cook of Cleveland, Mr. Arndtstein?

A. I refuse, for the same reason.

Mr. Bacon: I ask that the witness be instructed to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. Do you refuse to state whether you know Henry Beckerman of Cleveland?

A. I refuse, for the same reason, sir.

Mr. Bacon: I ask the Commissioner to direct the witness to answer.

Q. Do you know Samuel Doerfler of Cleveland?

A. I refuse to answer, for the same reason, sir.

Mr. Bacon: I ask the Commissioner to instruct the witness to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

303 Q. Do you know either Ernest Bernstein of Cleveland or Aleck Bernstein of Cleveland?

A. I refuse, for the same reason, sir.

Mr. Bacon: I ask the Commissioner to instruct the witness to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. And in each of those cases, do you refuse to answer on the ground that it might tend to incriminate you?

A. Yes sir.

Mr. Bacon: I ask the Commissioner to instruct the witness to answer the question whether he at any time during the past six months, heard any conversation between Joe Gluck and Nick Cohen. The Commissioner sustained the objection to that question.

The Commissioner: I surely will not sustain that objection. You will answer that question, Mr. Arndtstein: If you heard any conversation. Whether he heard a conversation or not, that certainly

is not objectionable in any way at all; that will not tend to incriminate him.

Mr. Fallon: The point about it is: His mere presence there where that conversation occurred, might, of itself, supply a link in a chain. And Mr. Tallman very properly sustained the objection. If your Honor wants to differ with him, we are perfectly willing to appear before the Judge on that, as a perfectly clear proposition.

The Commissioner: If he heard a conversation. The hearing of that conversation could not, by any possible means, tend to incriminate him.

Mr. Fallon: No; but your honor, taking it just in an isolated situation, I would agree with you too. But the situation is much more comprehensive than that. Suppose this man heard a conversation at a place, the very presence at which might allow an inference to be drawn. He is, of course, the best judge as to whether or not, under those circumstances, he can answer that question. And it was in line with that suggestion that Mr. Tallman, very properly, refused to compel an answer to that. Now of course, if your Honor differs with him, we are willing to stand on the record.

The Commissioner: All right. I will direct him to answer that.

The Witness: I refuse to answer, sir, for the same reason.

Q. And on the ground that it will tend to incriminate you?

A. Yes sir.

305 Q. Do you know under what different names Nick Cohen has been known?

A. I refuse to answer that, sir, for the same reason.

Mr. Bacon: I ask the Commissioner to direct the witness to answer.

Mr. Fallon: That very question was asked——

The Commissioner (interrupting): I decline to do so.

Mr. Bacon: Exception.

Q. Did you ever have any business dealings with Nick Cohen since October 1st 1919?

A. I refuse to answer, sir, for the same reason.

Mr. Bacon: I ask that the witness be instructed to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. Do you know Arthur Ecremont?

A. I refuse to answer, for the same reason.

Mr. Bacon: I ask that the witness be instructed to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. Did you ever deliver any securities to Arthur Ecremont since October 1st 1919?

A. I refuse to answer, for the same reason.

306 Mr. Bacon: I ask that the witness be instructed to answer.
The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. Did you receive any money, directly or indirectly, from Arthur Ecremont since October 1st 1919?

A. I refuse to answer, for the same reason, sir.

Mr. Bacon: I ask that the witness be instructed to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. Have you, at any time since the filing of the bankruptcy petition herein, delivered any property over to Arthur Ecremont or Phil Kastel, Charles Druckker, Ed. Winkler, or Ed. Furey, or any of them?

A. I refuse to answer, sir, for the same reason.

Mr. Bacon: I ask that the Court instruct the witness to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. Did you receive, from any of those men, during that period any money or securities?

A. I refuse to answer, sir, for the same reason.

307 Mr. Bacon: I ask the Commissioner to instruct the witness to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. With reference to this account, in the Pacific Bank, did you ever authorize anybody else to draw any checks upon it, than yourself?

A. No, sir.

Q. Have you a check book of that bank account?

A. I do not know whether I have or not, sir.

Q. You had one?

A. When I was drawing checks I did, yes sir.

Q. When was that?

A. I do not remember, it is so long ago.

The Commissioner: Was it in 1919?

The Witness: Yes sir.

Q. And how late in 1919 do you remember having drawn any checks on that account?

A. I could not say exactly, sir.

Q. What is the last period you remember?

The Commissioner: State as near as you can; what month?

308 The Witness: It was towards the latter part of the year, sir.
I think; or perhaps the early part of this year. I am not sure of the last time.

Q. Didn't you draw a check on that bank account since the 1st of January 1920, for about \$16,000?

A. I beg your pardon, sir?

Q. Didn't you draw a check on that bank account since the 1st of January 1920, for about \$16,000?

A. I refuse to answer, sir, for the same reason.

Mr. Bacon: I submit that is a proper question, sir.

Mr. Fallon: That might be the very thing that they contend we are concealing.

Mr. Bacon: I will ask the Court to instruct the bankrupt to answer the question.

The Commissioner: I decline so to do.

Mr. Bacon: Exception. I will ask the Court to instruct the witness to answer the question: "Did you receive any money from David Sullivan any other place than New York City during the past year?"

The Commissioner: I decline so to do.

Mr. Bacon: Note an exception.

Q. The witness refuses to answer?

A. Yes sir.

Q. Do you decline to answer whether you received any money from David Sullivan in New York City?

A. I refuse to answer, sir, for the same reason.

Mr. Bacon: I will ask the Commissioner to instruct the witness to answer that question.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. Have you given any money to your wife since the 1st of October 1919?

Mr. Fallon: We have been all over that on the record, your Honor.

A. No sir.

Mr. Bacon: The Commissioner says: "It seems to me that is a proper question."

Mr. Fallon: What page is that, Mr. Bacon?

Mr. Bacon: 2235. Finally he said he would sustain the objection. First he said he thought the question was proper. Then he afterwards sustained the objection.

Mr. Fallon: The Commissioner sustained the objection to that question.

Q. Do you refuse to answer?

A. Yes sir.

Mr. Bacon: I will ask the Commissioner to direct the witness to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. Have you paid any money to Messrs. Fallon & McGee, or to either of them?

A. No sir.

Mr. Fallon: He answered the question; he said "No sir" there.

Mr. Bacon: No; he was asked if he paid any money to you. I now ask him whether he paid any money to your firm, or to your partner.

The Commissioner: What was the answer?

(Answer read to the Commissioner as follows: "No sir.")

Q. Have you sent any securities, directly or indirectly, to any other country from this country, during the past six months?

A. I refuse to answer, for the same reason.

Mr. Bacon: I ask the Commissioner to instruct the witness to answer.

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. Did you meet Joe Gluck and Nick Cohen at the Hotel Endicott in this City last November?

A. I refuse to answer, sir, for the same reason.

Mr. Bacon: I will ask the Commissioner to instruct the witness to answer.

311

The Commissioner: I decline so to do.

Mr. Bacon: Exception.

Q. Were you at any gambling houses in Cleveland during the past three months?

A. I refuse to answer, sir, for the same reason.

Mr. Bacon: I will ask the Commissioner to instruct the witness to answer.

The Commissioner: I decline to do so.

Mr. Bacon: Exception.

Q. Were you in any gambling houses anywhere in the United States during the past three months?

A. I refuse to answer, sir, for the same reason.

Mr. Bacon: I will ask the Commissioner to instruct the witness to answer.

The Commissioner: I decline to do so.

Mr. Bacon: Exception.

Q. Did you lose any funds in any gambling house during the past five months?

A. I refuse to answer, sir, for the same reason.

Mr. Bacon: I ask that he be directed to answer that question.

The Commissioner: I decline to do so.

312 Mr. Bacon: Exception.

Q. Did you at any time since October 1st 1919, receive any profits of any gambling houses?

A. I refuse to answer, sir, for the same reason.

Mr. Bacon: I ask that the witness be instructed to answer that question.

The Commissioner: I decline to do so.

Mr. Bacon: Exception. Now I think, your Honor, that pending application to compel answers to some of these questions, it will be wise to take an adjournment, before we proceed further with the examination; and it is clearly understood that the examination is not completed.

Mr. Fallon: I think it is about time this examination——

The Commissioner (interrupting): Mr. Fallon, these questions will all be passed upon. Mr. Bacon, or Mr. Myers, whoever is going to proceed with it, can make application to Judge Knox at any time that he sees fit.

Mr. Fallon: He can order another examination whenever he sees fit?

The Commissioner: Judge Knox can.

Mr. Bacon: The point of the thing is this: We want to retain jurisdiction of the bankrupt here.

313 The Commissioner: He is subject to the jurisdiction of the Court. He is bound to be here anyway.

Mr. Fallon: Certainly; he would have to be here.

The Commissioner: Now Mr. Bacon, what time do you want it to be adjourned to?

Mr. Fallon: Mr. Myers said at the end of the last hearing: "I think we have made a fairly good record."

Mr. Bacon: Well, I understood that Mr. Myers suggested that the examination of the bankrupt be adjourned until June 10th. It will take some time, of course, to get this record transcribed.

The Commissioner: What date do you suggest, Mr. Bacon?

Mr. Bacon: I understood Mr. Myers suggested the 10th of June.

Mr. Fallon: That will give us a chance to do some other work; as long as he is going ahead and get this motion for contempt out of the way.

The Commissioner: It will be adjourned over to June 10th, at 10 o'clock, a. m.

Mr. Bacon: That is, I take it, only the examination of the bankrupt?

The Commissioner: Only as to Mr. Arndtstein; that is
314 all.

Mr. Bacon: I take it that the record is to be certified?

The Commissioner: Yes. It will be ready long before that time.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

Examination of the bankrupt adjourned to Tuesday, June 10th, 1920, at 10 a. m.

Special Commissioner's certificate attached.

315

In the Matter of NICHOLAS ARNSTEIN.

New York, September 14th, 1920—2 p. m.

Met pursuant to adjournment.

Present:

The Commissioner (Mr. Gilchrist).

Mr. Myers.

Mr. Fallon.

Mr. Fallon: I will suggest, Mr. Commissioner, that we stipulate that the questions called for in the order were asked, and that the bankrupt refused to answer, asserting his Constitutional privilege, and that he was ordered and directed to answer them, and that he refused to answer them.

316 Mr. Myers: I won't make any such stipulation.

Mr. Fallon: What are you going to do? Ask each one of the questions?

Mr. Myers: I am going to ask them all. (Addressing Mr. Arnstein:) Mr. Arnstein, will you state to the Court——

Mr. Fallon (interrupting): I think there is a motion to your Honor, before Mr. Myers begins: I would suggest that we, to save the Court's time, that we have it understood that all these questions called for in the order had been asked, and that the bankrupt had refused to answer them, and that he had been directed to answer them, and that he still refused to answer them, claiming his Constitutional privilege. Now, I do not see any sense in repeating these questions one after the order, and extending this thing throughout the entire afternoon.

Mr. Myers: I am going to ask these questions, and as soon as the witness shows a disposition not to comply with the order of the Court, I am going to ask the Judge to commit him to jail at once; not tomorrow, but today.

The Commissioner: Perhaps you had better, Mr. Fallon, proceed, and not have any question arise hereafter.

Mr. Fallon: It is just a question of saving time. They can do as they like about that.

317 Mr. Myers: Will you swear the witness?

The Commissioner: He was sworn.

Mr. Myers: We would like to be sure about it this time.

JULES W. ARNDSTEIN, being duly sworn by Commissioner Gilchrist, testified as follows:

Examined by Mr. Myers:

"Q. Will you state to the Court where you went first, just before Lincoln's Birthday of this year?"

A. I refuse to answer, on the ground it may degrade and incriminate me.

"Q. Where did you come from?"

A. I refuse to answer, for the same reason.

"Q. Where did you go first when you got in New York State?"

A. I refuse to answer, for the same reason.

"Q. Will you say where you were yesterday?" The day before you got back to New York City.

A. I refuse to answer, for the same reason.

"Q. Have you received any communication from your wife since Lincoln's Birthday, either directly or indirectly?"

A. I refuse to answer, for the same reason.

318 "Q. When did you see Joe Gluck last?"

A. I refuse to answer.

"Q. Do you say whether you know him or not?"

A. I refuse to answer.

"Q. Do you know Irving Gluck?"

A. I refuse to answer, for the same reason.

"Q. Do you know Rudolph Bunora?"

A. I refuse to answer, for the same reason.

"Q. Do you know Herbert Bunora?"

A. I refuse to answer.

"Q. Do you know Murray Fox?"

A. I refuse to answer.

"Q. Do you know James Kean?"

A. I refuse to answer.

"Q. Do you know David Haines?"

A. I refuse to answer.

"Q. Do you know Ed. Furey?"

A. I refuse to answer.

"Q. Do you know David Sullivan?"

A. I refuse to answer, for the same reason.

"Q. Do you know Norman S. Bowles?"

A. I refuse to answer.

"Q. Do you know W. W. Easterday?"

A. I refuse to answer, for the same reason.

"Q. Do you know Hartford Jimmy?"

A. I refuse to answer.

319 "Q. Do you know Al. Hunter?"

A. I refuse to answer.

"Q. Do you know Billy King?"

A. I refuse to answer.

"Q. Do you know Phil. Kastel?"

A. I refuse to answer.

"Q. Do you know Nick Cohen?"

A. I refuse to answer.

"Q. Do you know Charles Druckker?"

A. I refuse to answer, for the same reason.

"Q. Do you know Eddie Winkler?"

A. I refuse to answer, for the same reason.

"Q. Do you know Arthur Ecremont?"

A. I refuse to answer, for the same reason.

"Q. Did you ever know Mortimer Bernstein?"

A. I refuse to answer, for the same reason.

"Q. Do you know Louis Bleet?"

A. I refuse to answer, for the same reason.

"Q. Do you know Cheeks Ginsberg?"

A. I refuse to answer, for the same reason.

"Q. Do you know anyone in Cleveland?"

A. I refuse to answer.

"Q. Do you know Samuel T. Haas?"

A. I refuse to answer, for the same reason.

"Q. Do you know Joseph Klein?"

320 A. I refuse to answer, for the same reason.

"Q. Do you know Don Lloyd?"

A. I refuse to answer, for the same reason.

"Q. Do you know Dan Lloyd?"

A. I refuse to answer, for the same reason.

"Q. Do you know Joe Marino?"

A. I refuse to answer, for the same reason.

"Q. Do you know George Hackett?"

A. I refuse to answer, for the same reason.

"Q. Do you know Sam Gireau?"

A. I refuse to answer, for the same reason.

"Q. Do you know Michael Radice?"

A. I refuse to answer, for the same reason.

"Q. Do you know Mattie Pandelfi?"

A. I refuse to answer, for the same reason.

"Q. Do you know Joe Peppe?"

A. I refuse to answer, for the same reason.

"Q. Do you know Jimmy Ryan?"

A. I refuse to answer, for the same reason.

"Q. Do you know E. P. Strong?"

A. I refuse to answer, for the same reason.

"Q. Do you know Frank Thompson?"

A. I refuse to answer, for the same reason.

321 "Q. Did you ever see any stocks or bonds during the past year, anywhere?"

A. I refuse to answer, for the same reason.

"Q. Did you touch any stocks or bonds any time, or place, within the past year?"

A. You know more about that than I do. What is the use asking these questions?

The Commissioner: That is not an answer, Mr. Arndtstein.

The Witness: I refuse to answer, the same reason. It is so ridiculous.

"Q. Did you buy or sell any shares of stocks or bonds at any time during the past year?"

A. I refuse to answer, for the same reason.

"Q. Do you say that you never had in your possession or under your control, a single share of stock, or bond mentioned in the list marked Exhibit 1 which has been shown to you in this proceeding?"

A. (No answer.)

Q. Do you refuse to answer that?

A. I answered that long ago; and I refuse again.

"Q. Do you say that you never saw those securities?"

A. I refuse to answer.

"Q. Do you say you never touched them?"

A. (No answer.)

"Q. Did you ever see them in anyone else's possession?"

A. (No answer.)

Q. Do you refuse to answer?

A. Yes, I refuse.

"Q. Did you ever go to Washington with Nick Cohen?"

A. (No answer.)

Q. Do you refuse to answer that?

A. I refuse.

Q. On the ground it will incriminate you?

A. The same ground.

Mr. Fallon: Degrade and incriminate.

The Witness: Degrade and incriminate, yes.

"Q. Did you ever meet Nick Cohen in Washington?"

A. I refuse to answer, for the same reason.

"Q. Have you invested any money anywhere in the past year?"

A. I refuse to answer, for the same reason.

"Q. Have you handled any moneys since Lincoln's Birthday this year?"

A. I refuse to answer, for the same reason.

"Q. Have you had any property in your possession anywhere since Washington's Birthday this year?"

A. I refuse to answer, for the same reason.

"Q. Where have you been living?"

A. I refuse to answer, for the same reason.

"Q. State the various places where you have been since Lincoln's Birthday."

A. I refuse to answer, for the same reason.

323 "Q. Will you state where you have been before you came into Court upon your return to this City?"

A. I refuse to answer, for the same reason.

The Commissioner: On what ground do you refuse? I did not hear the ground.

The Witness: On the ground it will degrade and incriminate me, sir.

"Q. Will you state your movements from the time you arrived in New York City, upon your return to the city?"

A. I refuse to answer, for the same reason.

"Q. Will you state with whom you spoke in New York upon your return?"

A. I refuse to answer, for the same reason.

"Q. Where did you get into the automobile in which you came into this city?"

A. I refuse to answer, for the same reason.

"Q. Where did you go to when you left New York on February 10th or 11th, this year?"

A. I refuse to answer, for the same reason.

"Q. Where have you been since that time?"

A. I refuse to answer.

324 "Q. In how many different cities have you been since the 10th of February this year?"

A. I refuse to answer, for the same reason.

"Q. What persons did you talk with since the 10th of February this year?"

A. I refuse to answer, for the same reason.

"Q. What banks, trust companies, safe deposit companies, or brokers, have you visited since the 10th of February this year?"

A. I refuse to answer.

"Q. How often have you seen Nick Cohen since the 10th of February this year?"

A. I refuse to answer, for the same reason.

"Q. How often have you seen Phil. Kastel since the 10th of February this year?"

A. I refuse to answer, for the same reason.

"Q. How often have you seen Charles Druckker since the 10th of February this year?"

A. I refuse to answer, for the same reason.

"Q. How often have you seen Ed. Strong since the 10th of February this year?"

A. I refuse to answer, for the same reason.

"Q. Did you telephone to anyone upon your return to New York?"

A. I refuse to answer, for the same reason.

325 "Q. Have you made any statement about your affairs to anyone in the past six months?"

A. I refuse to answer, for the same reason.

"Q. Have you authorized any such statement?"

A. I refuse to answer, for the same reason.

"Q. Do you know any brokers in New York City?"

A. I refuse to answer, for the same reason.

"Q. Have you ever authorized anybody to buy or sell any shares of stock for you?"

A. I refuse to answer, for the same reason.

"Q. Have you ever authorized anybody to buy or sell any bonds for you?"

A. I refuse to answer, for the same reason.

"Q. Have you ever borrowed any money in the past year?"

A. I refuse to answer, for the same reason.

"Q. Have you loaned any money in the past year?"

A. I refuse to answer, for the same reason.

"Q. Have you handled any money or any property of any nature, kind or description, in the last six months, excepting the \$500 which you have testified you received from your wife in February of this year, just before you left?"

A. I refuse to answer, for the same reason.

"Q. Did you meet the Gondcrfs at Atlantic City?"

A. I refuse to answer, for the same reason.

"Q. Did you visit them at Atlantic City?"

326 A. I refuse to answer, for the same reason.

"Q. Do you know O'Brien, the clerk at the Hotel Claridge?"

A. I refuse to answer, for the same reason.

"Q. Do you know Mr. Washer, who has a cafe at 86th Street & Broadway?"

A. I refuse to answer, for the same reason.

"Q. Where have you been since the filing of the petition in bankruptcy in this case?"

A. I refuse to answer, for the same reason.

Mr. Myers: Now, I understand, your Honor, those are all of the questions in Schedule C, and I ask your Honor to direct the witness to answer those questions.

The Commissioner: I have heretofore directed him to answer the questions, and I suppose he declines to answer, on the ground that it would tend to incriminate or degrade him.

The Witness: Pardon me, sir?

The Commissioner: I presume you will refuse to answer every question that is asked, and that you decline to answer on the ground it will tend to incriminate or degrade you?

The Witness: Yes sir.

The Commissioner: Mr. Myers, I think you have covered enough ground to go before the Judge.

327 Mr. Fallon: We will go before the Judge when we are served with some formal notice.

Mr. Myers: If they do not go before the Judge, I will ask your Honor that be committed right now.

The Commissioner: Go right before the Judge now.

Mr. Fallon: If they are prepared to make a formal motion, we are prepared to meet it.

Mr. Myers: We are prepared to have a commitment signed to put him in jail this afternoon.

The Commissioner: There is no necessity for any argument. You will now go before Judge Manton on the fourth floor of this building, with the stenographer, Mr. Fallon, Mr. Myers, and Mr. Arndstein, forthwith.

Counsel, the bankrupt, and the stenographer appeared before Judge Manton in his Chambers.

Mr. Myers presented to the Court an order adjudging the witness in contempt of Court, and applied for commitment forthwith.

Mr. Fallon applied for an adjournment until tomorrow morning (Wednesday, September 15th, 1920) at 10 o'clock, in order to be given an opportunity to apply for a writ of habeas corpus.

328 After hearing argument by counsel, the Court adjourned the matter until Wednesday, September 15th, 1920, at 10 a. m.

Adjourned to Wednesday, September 15th, 1920, at 10 a. m.

329 IRVING GLUCK, called as a witness, testified as follows:

Examined by Mr. Dooling:

Q. Irving, did you ever buy, down in Nassau Street or any other street, a bag?

A. Yes sir.

Q. Where did you buy that bag?

A. Beaver Street.

Q. What sort of a bag was it?

A. It was a leather bag.

Q. What was it intended to hold; bonds and securities?

A. Yes sir; securities.

Q. Who was with you when you bought it?

A. Furey.

Q. The man over there, Edward Furey, was with you at the time?

A. Yes sir.

Mr. Dooling: Mr. Furey, I want you to hear this.

Mr. Furey: Yes sir.

Q. You say he was with you when you bought it?

A. Yes sir.

Q. Do you remember when it was that you bought it; how long was it before you were arrested?

A. About four days before I was arrested.

Q. And did you have any talk with him at or before the time the bag was bought?

A. Yes sir.

Q. What talk did you have with him about the bag, and
330 what was the purpose it was to be used for?

A. It was to be used to hold securities and bonds. The price was \$14 and some change, and I only had \$10.

Q. And did he give you the balance?

A. No sir.

Q. Where did you get that from?

A. I had to go back to Joe and get it.

Q. You had to go back to your brother Joe and get the money?

A. Yes sir.

Q. Did you see that bag afterwards in the custody or possession of Mr. Furey?

A. No sir.

Q. Where is the last place you saw that bag?

A. 46th Street, in front of the Argonne Hotel.

Q. Is that where Furey lived?

A. Yes sir, as far as I know.

Q. In whose possession was the bag then; your brother's or Furey's? Tell us what you recall.

A. I don't recall.

Q. You recall that is the last place you saw it?

A. I recall that is the last place I saw it, in front of—outside of the Argonne Hotel.

Q. And is that the day that you and some others went down to Carlisle, Mellick & Compapny?

A. Yes sir.

Q. And on that occasion there was some slip-up; you were not able to fill the bag?

A. Yes sir.

Q. And you went uptown empty handed?

A. Yes sir.

Q. Did you and Furey and your brother ride up in a cab?

A. Yes sir.

Q. Is that the same cab that you came downtown in?

A. Yes sir.

Q. Where was the cab left downtown?

A. Pine & William Street; on the corner.

Q. In front of Kuhn, Loeb Building, was it?

A. Yes sir.

Q. And you people walked down around Wall Street?

A. Yes sir.

Q. And over to Carlisle, Mellick & Company?

A. Yes sir.

Q. Did Furey accompany you in the guise of guardian or watchman of a messenger?

A. Yes sir.

Q. While you carried the bag?

A. Yes sir.

Q. Furey was not asleep or drunk at the time?

A. No sir.

Q. He was apparently in full possession of his faculties, just as he is now?

A. Yes sir.

By Mr. Myers:

Q. Will you please tell the Court, in your own way, all you know about these securities, from the very beginning?

332 Mr. Furey: May I ask him a few questions first?

Mr. Dooling: Yes. Now tell the whole truth. (Addressing Mr. J. Gluck:) Will you tell your brother to tell the whole truth here?

Mr. J. Gluck: Everything the truth; that is all.

Mr. I. Gluck: Yes sir.

Mr. Furey: You say that I went down there with you with a bag?

Mr. I. Gluck: You went down there with me to buy the bag.

Mr. Furey: Have you got that bag?

Mr. I. Gluck: No, I have not.

Mr. Furey: You have not got the bag?

Mr. I. Gluck: No sir.

Mr. Furey: You say that you have been over here a number of times, haven't you?

Mr. I. Gluck: Yes, I have.

Mr. Furey: How many times have you been over here?

Mr. I. Gluck: I don't recall.

Mr. Furey: Well, just about how many?

Mr. J. Gluck: I think it is about——

333 Mr. Furey (interrupting): Just a minute; don't put the words in his mouth.

Mr. Myers: Let him say in his own words.

Mr. Furey: You have been over here a number of times, haven't you?

Mr. I. Gluck: Yes sir.

Mr. Furey: How many times, about?

Mr. I. Gluck: About two times.

Mr. Furey: A little more than that, wasn't it?

Mr. I. Gluck: I was over here to see Mr. Murphy. I was over here to see Mr. Dooling.

Mr. Furey: You came over here with Joe, didn't you, every time he came over?

Mr. I. Gluck: No.

Mr. Furey: How many times has Joe been over here?

Mr. I. Gluck: I don't know. I don't know how many times he has been over here.

Mr. Furey: Have you been over here every time that Joe has been over here?

Mr. I. Gluck: No.

Mr. Furey: You have not?

Mr. I. Gluck: No.

Mr. Dooling: He has not.

334 Mr. Furey: You have only been over here twice. You are his brother, aren't you? (Indicating J. Gluck.)

Mr. I. Gluck: I am his brother, yes.

Mr. Furey: You have talked about this case many times, you and he together?

Mr. I. Gluck: Yes.

Mr. Furey: You have drilled it over pretty well since you have been there, haven't you?

Mr. I. Gluck: No, we have not.

Mr. Furey: Haven't you and he drilled it over pretty good before you came over here—now I am asking you that question—haven't you and him talked together about this?

Mr. I. Gluck: No; we haven't made up any story. I am telling drill anything, no.

Mr. Furey: You got up a good story together, didn't you?

Mr. I. Gluck: No; we haven't made up any story. I am telling the truth. That is all.

Mr. Myers: Go ahead; ask him some more.

By Mr. Dooling:

Q. Every time that you have come over here, has it been pressed upon your mind that it is best for you and for all the others involved here, to tell the truth?

A. Yes sir.

335 Q. Have you been urged to tell the truth?

A. Yes sir.

Q. Has any promise of immunity been held out to you, or to any of them?

A. Not as far as I know.

Mr. Furey: Didn't they ask you questions, and everything else, until you said "Yes" all the time, to Mr. Dooling and Mr. Myers?

Mr. I. Gluck: They asked me questions until I answered the truth.

Mr. Furey: You answered them yes or no, didn't you?

Mr. I. Gluck: Yes; sure.

By Mr. Myers:

Q. Now, tell us the story of these bond thefts, from the very beginning.

By Mr. Dooling:

Q. How you were drawn into it; just what you did; what part Furey and the others played.

A. Well, at the early part of last year, 1919, I was working for Bamberger, Loeb & Company. One day, as I was making a delivery, a fellow came over to me——

By Mr. Dooling:

Q. What is his name?

A. In front of 25 Broad Street.

Q. What is the name of the boy?

336 A. I don't know. He met me and asked me, he said "What are you; a runner?" I said "Yes." He said "Well, you handle stocks and bonds?" I said "Yes." So he coaxed into my head, he gave me the whole drilling and everything else; brought me over to a lunch room and gave me something to eat, and told me that if I would steal stocks and bonds, he would be able to sell them for me, and I would be able to make a lot of money. So he said he would meet me the next day in 25 Broad Street. He never met me there—I had some stocks, I didn't know what to do with them. I held them for a couple of days, and I went over to my brother, Joseph, and asked him what I should do with them.

By Mr. Myers:

Q. Where was he working then?

A. He was working for Gilbert J. Postley.

By Mr. Dooling:

Q. Do you remember what those stocks were?

A. I think they were temporary certificates.

Q. Which?

A. Temporary certificates.

By Mr. Myers:

Q. Of what company?

A. Stromberg Carburetor; Allied Packers; Keystone Tires; Fat Rubber.

Q. Where did you get those?

A. Well, I don't remember the firms.

Q. Did you take them out of the firm's place of business or from messenger boys?

337 A. I got them off messenger boys.

Q. Do you know the names of the boys?

A. No sir.

Q. None of them?

A. No sir.

Q. Or the houses?

A. No sir; I don't remember the houses.

Q. Go ahead with your story.

A. Well, he didn't meet me. I asked my brother Joe about it a couple of days later. And he gave me—he told me it was wrong of me, at first. But after a while we figured there was a lot of money in it; he said he would see what he could do with it. Then he got in touch with these people—I never saw any of them.

By Mr. Dooling:

Q. What people?

A. Well, I guess Nick Cohen and Nick Arnstein.

Q. This is earlier than that, the Allied Packers.

A. Yes; but—

Q. (Interrupting.) What was done with the first batch; with that Allied Packers; that was back before September last.

A. I think we destroyed that.

Q. Oh no, they were not destroyed.

A. (No answer.)

By Mr. Myers:

Q. What about Wolf?

A. Oh yes; that is right. He got in touch with Harry Wolf in some way, see; and told him that we could get bonds—that
338 they could get rid of bonds. So I went down and got after bonds; and I did get some bonds.

Q. What bonds?

By Mr. Dooling:

Q. Was the man that you saw down in front of Broad Street, who suggested that you do this, a fellow named Browser?

A. No sir.

Q. It was not?

A. No sir.

By Mr. Myers:

Q. Have you since found out who he was?

A. No sir; I have never seen him again.

By Mr. Dooling:

Q. Was it Chubby?

A. No sir; I never seen the fellow again.

By Mr. Myers:

Q. You never found out the name?

A. No sir.

Q. You never did business with him?

A. No sir. I only saw him once; that is all I saw of him.

Q. Go right ahead. You were telling us about Wolf and the bonds.

A. I went down and got some bonds.

Q. What bonds did you get?

A. 5 Pennsylvania.

Q. Where did you get those?

A. Those I got from—they came from F. B. Keech & Company; I got them off a messenger boy.

Q. What else? Do you want the list? Would the list help you?

A. Yes sir; if you don't mind.

239 Mr. J. Gluck: First let him see what he can remember without the list, Mr. Myers.

Q. First see what you can remember without the list.

A. 5 Pennsylvania; Missouri Pacific, 2 I think.

Q. How many?

A. 2 of them I think.

Q. 2 Missouri Pacific?

A. Ohio Central.

Q. How many?

A. One I think.

Q. Go ahead.

A. Bethlehem Steel.

Q. How many?

A. One.

Q. Yes?

A. Central Pacific.

Q. Central?

A. Yes sir.

Q. Southern Pacific?

A. Central Pacific.

Q. Are you sure it is Central Pacific?

A. I think so; I am not sure.

Mr. Myers (addressing J. Gluck): There was not any Central Pacific, was there?

Mr. J. Gluck: Yes sir; that is right. Can I ask a question?

Mr. Myers: Yes.

Mr. J. Gluck: Do you mean to say you got all those bonds yourself?

Mr. I. Gluck: I don't know; these are the ones I recollect. Maybe I got them or somebody else got them.

340 Mr. J. Gluck: You know I had those bonds.

Mr. I. Gluck: Yes; I know he had those bonds.

Q. Go right on with your story now.

A. Southern Pacific; Wilson Packing Company, 2.

Q. How many Southern Pacific?

A. One. Interborough Rapid Transit Co., 5 of those.

Q. Go ahead.

A. (No answer.)

Q. All right; let's pass on from that. What is the next step?

A. Then he gave those to Harry Wolf. All I received of that was \$100.

Q. Did you meet Harry Wolf?

A. No sir.

Q. Never?

A. I never met him, but I saw him.

Q. Where?

A. I saw him from the Subway Station, but I could not describe him or identify him.

Q. What?

A. I could not identify him I don't think. I only saw him from the Subway Station.

By Mr. Dooling:

Q. What did your brother do with the temporary certificates, do you remember?

A. He told me he destroyed them; he could not do anything with them.

Q. Why?

A. Because they were temporary certificates.

Q. Too much danger; is that it?

A. I don't know.

By Mr. Myers:

Q. What is the next step after Harry Wolf?

A. Then he got in touch with that Maek; Nick Cohen.

341 Q. What month was that, do you know?

A. He got in touch with him—what do you mean, what was that?

Q. What month?

A. I think it was September 1919; I am not sure.

Q. Did you meet Nick Cohen?

A. I only saw him once.

Q. How?

A. I only saw him once.

Q. Where?

A. Up at my house.

Q. Would you remember him?

A. Yes sir.

Q. Have you identified his picture?

A. Yes sir.

Q. You have identified his photograph?

A. Yes sir.

Q. In this proceeding?

A. Yes sir.

Q. Will you pick out his picture there? (Showing witness pictures of Nick Cohen.)

A. Yes sir. (Indicating.)

Marked Exhibit A for identification of this date.

Q. Did you meet Cohen at your house?

A. Yes sir—I was not introduced to him. I was sitting in the parlor reading a magazine, and he came in.

Q. Go right ahead.

A. That was later; that was after the stocks were put through, when I saw him.

Q. Did you ever meet Arnstein?

342 A. No sir; I never saw Arnstein.

Q. You would take those securities and give them to your brother; is that right?

A. Yes sir.

Q. How long did that go on; up to the first of the year?

A. No sir.

Q. When did you stop?

A. In October; the early part of October.

Q. Why did you stop?

A. Why did I stop? Well, that Sullivan case came up then, and Nick Cohen and Arnstein left town, as far as I heard.

Q. Then when did you resume? When did you start again?

A. February—between February 6th and 10th.

Q. When did you start again? How did it come about?

A. Well, Mr. Furey shook down my brother, in plain words.

Q. How did he do that?

A. The way my brother told me, he went to my father's store, Second Avenue & 50th Street, and flashed detectives' badges, accompanied by—

Q. (Interrupting.) Were you there?

A. No sir; I was home.

Q. And your brother told you this?

A. Yes sir.

Q. Did he tell it to your right away, at the same time?

A. The same day, yes sir, when he came home.

Q. What did he tell you?

343 A. He told me that the bulls were after him.

Q. Who?

A. The bulls; he came home and told me about that.

Q. What did he tell you?

A. He told me that this Furey and the other partner, The Count, offered to sell securities for him.

Q. Did your brother know Furey before he came to the store that day?

A. No sir.

Q. Did he know The Count?

A. No sir, not as far as I know.

Q. Was Adler there?

A. Yes sir.

Q. Did you know Adler before this?

A. Yes sir.

Q. Had he been to your home frequently?

A. Yes sir.

Q. Well now, he told you that Furey and The Count had shaken him down?

A. Yes sir.

Q. Then what was the next step?

A. And he also told me that The Count took some securities off him, intending to go to Philadelphia to sell them; that he would send him a telegram.

Q. All, right; now Furey and The Count shook your brother down. Then why did you go out and steal some more securities for Furey?

A. Well, later on my brother told me that Furey had connections out in Canada; in other words, an outlet for the stocks.

Q. Yes; go right ahead.

A. Then he told me to get a position as a messenger down in Wall Street. At the same time I heard he got in touch with the Murray Abramowitz, who was working for Parrish & Company, and he was supposed to leave the firm with securities—

Q. Well, did you go downtown with Furey?

A. Yes sir.

Q. When; what date? Can you say what date?

A. I went down with Furey on February 8th, February 9th, and February 10th.

Q. Where did you go the first day?

A. The first day I went to the Woolworth Building.

Q. What took place?

A. We were talking about it.

Q. Who is "we"?

A. Furey, my brother Joe and I.

Q. No one else?

A. I saw Jim Kean down there.

Q. What?

A. I saw Jim Kean down there one day.

Q. Can you point him out here in Court?

A. Yes sir

Q. Point him out.

A. (Witness points to James Kean.)

Q. What was said down there at the Woolworth Building?

A. That we should get as much as we could lay our hands on.

Q. Who said that?

A. My brother Joe and Furey.

Q. Well, go on; tell us everything.

345 A. They also promised Abramowitz—

Q. (By Mr. Dooling, interrupting.) Were you to meet anybody anywhere uptown or downtown before that?

A. Yes sir.

Q. Who?

A. I was to meet Murray Fox, Murray Abramowitz. I was to meet him at Parrish & Company, I think it was. I met him there twice. I met him there on February 9th and February 10th. And Murray Abramowitz told me that he was going to get them February 9th. But he did not get them February 9th. February 10th he said he was going to get them. February 10th he came up there; he said he was going to bring them up a little later. He said he was going to get two loans at the Park National Bank.

By Mr. Myers:

Q. Was there anything said about getting you a job anywhere?

A. Yes sir.

Q. Who said it, and where were you to get the job?

A. I was to get a job with Parrish & Company; Murray Abramowitz said he was going to speak to the head runner.

Q. And get you a job there?

A. Yes sir.

Q. And after that were you going to get hold of some stocks; in addition to Murray Fox?

A. Yes sir.

Q. Who was the head runner?

A. I don't know his name, sir.

346 Q. He was to introduce you down there to the head runner and land a job for you?

A. Yes sir.

Q. When did you go to Carlisle, Mellick & Company?

A. I went to Carlisle, Mellick a few days before that.

Q. Was that before you went to Parrish & Company?

A. Yes sir; before I went to Parrish.

Q. Tell us all about it. Did you go there with a new bag?

A. Yes sir.

Q. Who went with you?

A. Furey went with me.

Q. What took place? Tell the Court everything.

A. We went to the window; we were supposed to get stocks.

Q. Where did Furey and your brother stand; and were they talking with anyone?

A. My brother was around the corner with the taxicab; Furey with me all the while.

- Q. Did he talk to anybody?
A. Yes; he talked to the special officer.
Q. Where?
A. In the corridor there at Carlisle, Mellick's.
Q. Was he engaged in conversation with the special officer when you went up to the window?
A. Yes sir.
Q. When you got to the window what did you find?
A. We found nothing; didn't get nothing.
347 Q. Was there a different clerk there?
A. Yes sir; a different clerk there.
Q. The one you expected to see had been shifted?
A. Yes sir.
Q. You got nothing?
A. No sir.
Q. Who was that clerk in Carlisle, Mellick's? What was his name?
A. I know him as Jack Mohegan. I don't know his right name.

By Mr. Dooling:

- Q. Where does he live, do you know?
A. He lives on 175th Street somewhere.

By Mr. Myers:

- Q. Spell the last name.
A. M-o-h-e-g-a-n.

By Mr. Dooling:

- Q. Something like the avenue up there?

Mr. R. Bunora: I think that is his fighting name; he is somewhat of a boxer. I think that is his fighting name.

Mr. Myers (addressing Mr. R. Bunora): What is his right name?

Mr. R. Bunora: I don't know his name. He is a German.

By Mr. Myers:

- Q. Did you meet him before you went inside? Did you meet him out on the street?

A. Yes.

- Q. He came out on the street and had a talk with you?
348 A. He came out on the street afterwards.
Q. He came out on the street before you went into that office, didn't he? Don't you remember meeting him out on the street before you went in with the bag?
A. He came out afterwards; after we went in.
Q. He met you afterwards?
A. Just somewhere around ten or fifteen minutes after.
Q. What did he say?
A. He said he was shifted.

Q. What did he mean?

A. He was put on a different job in the office.

Q. Then you did not get anything there that day?

A. No sir.

Q. Where did you go with Furey?

A. We took the same taxicab up in front of the Argonne Hotel, where Furey took the bag out.

Q. Who took the bag?

A. Furey.

By Mr. Dooling:

Q. Who paid for the taxicab, and what did it cost, if you remember?

A. My brother Joe paid for the taxi.

By Mr. Myers:

Q. Do you remember what it cost?

A. \$10.

Q. That was the agreed price, was it?

A. Yes; back and forth.

349 By Mr. Dooling:

Q. Did you know the driver?

A. No sir, I did not know him.

By Mr. Myers:

Q. Can you describe him?

A. Well, he was a heavy set fellow.

By Mr. Dooling:

Q. Did he seem to know you or your brother or Furey?

A. He knew Furey. He didn't know my brother or I.

By Mr. Myers:

Q. Where was he picked up, do you know?

A. He was picked up in front of a lunch room on 39th Street I think it was, or 40th Street & Broadway, on the East side of the avenue.

Q. Will you describe this fellow, this bookkeeper that you were talking about, this clerk Mohegan?

A. Well, he is a slim fellow.

Q. Well, how tall?

A. Just a trifle taller than I am.

Q. What color hair?

A. Chestnut I think it is.

By Mr. Dooling:

Q. Is it Red Dollup?

A. No sir.

Q. Do you know Red Dollup?

A. No sir.

By Mr. Myers:

Q. How old is he?

A. Some place about my age.

Q. How old is that?

A. I am 19.

Q. How tall is he; can you say that?

350 A. Just a trifle taller than I am.

Q. How tall is that?

A. I am five foot seven and a half I think.

Mr. R. Bunora: He is about five foot nine, Mr. Myers.

Q. How much does he weigh?

A. About 135 or 140.

Q. Do you know his religion?

Mr. R. Bunora: I think he is a Protestant, Mr. Myers.

Q. Do you know if he has any scars or anything that you could recognize him by?

A. I don't know.

By Mr. Dooling:

Q. Does he hang out in any pool room anywheres uptown?

A. Yes sir.

Q. What pool room?

A. Burke's Pool Room, 174th Street & Boston Road.

Q. Did Furey ever tell you that the work that he was doing and attempting to do in the way of getting bonds, was in the public interest or not?

A. No sir.

Q. Was there anything said about what was to be done after you got the bonds? Whether you were to stay in New York or go to Tuxedo or Goshen?

A. I was to stay in New York, and Abramowitz was supposed to go to college up in Canada.

351 Q. Were the bonds to go up the same day?

A. Yes sir.

Q. Where were they to take the train? Any particular place?

A. At 125th Street I think.

Q. Have you had any talks with Furey since you have been in the Tombs; whether downstairs or at Headquarters, in relation to the case?

A. The only time we had any talk was when we were in Headquarters the first night.

Q. Did he tell you to open up and tell everything that happened, and tell the whole truth?

A. No sir; he said "Stand pat; don't squeal; get Lawyer Fallon only."

Q. "Stand pat, don't squeal, and get Lawyer Fallon?"

A. Yes sir.

Q. When he was downstairs in this building, in one of the pens, with you and the other boys, did he say anything to you?

A. Yes sir.

Q. What did he say?

A. He said: He has no hard feelings against me; that I didn't do him any harm; that he expected to beat his case.

Q. He expected to beat it?

A. Yes sir.

Q. What did he say about you; whether you had a chance of being punished slightly?

A. He said I would get Elmira Reformatory.

352 Q. That was the worst that you could face?

A. Yes; that is what he said.

Q. What did he say about young Bunora and his brother?

A. I didn't hear him mention about Rudie.

By Mr. Myers:

Q. Did he threaten you at all at any time?

A. No sir.

Q. What did he say your brother would be likely to get?

A. At first he said my brother was likely to get five to ten. After a while he said he will get Elmira, was all.

Mr. Furey: Were you there when I was supposed to say that?

Mr. I. Gluck: Yes.

Mr. Furey: Where at?

Mr. I. Gluck: In No. 2 pen.

Mr. Furey: Ain't you upstairs——

Mr. I. Gluck (interrupting): In No 2 pen, going to Court

By Mr. Dooling:

Q. That is when your cases were put on the calendar?

A. Yes sir.

Q. When we had you brought into Court?

A. Yes sir.

By Mr. Myers:

Q. Why did he tell you to get Fallon as your lawyer?

353 A. He said he is a good criminal lawyer I guess; I don't know why he said that.

Q. Did he say anything about any politician?

A. Well, he mentioned something, in the pen, while going to Court, that he had some politician working on the case; something of that sort.

Q. Did he say who?

A. No sir.

Q. Did he say whether he had any pull or not?

A. No.

Q. Did he say whether the politician had any pull?

A. Well, I guess he just mentioned that he had politics working on this case; that is about all he mentioned.

Q. He did not mentioned any names?

A. No sir.

Q. Did you ever have any talks with Kean?

A. The only time I saw Kean was up in the Hotel Claridge.

Q. Who else was present?

A. Furey, Joe, and myself.

By Mr. Dooling:

Q. That was of course before your arrest?

A. Yes sir.

By Mr. Myers:

Q. What was said up there by Kean and the others?

A. Well, Kean seemed nervous; he claimed that detectives were hanging around the Hotel Claridge; speaking to the hotel clerk; something of that sort.

Q. He seemed apprehensive; is that it?

A. Yes sir.

Q. Did he sort of warn you people to be on your guard?

A. He just said to be careful.

354 By Mr. Dooling:

Q. What did he say to your brother, as to what he should do—do you know whether your brother went to Headquarters at any time before he was arrested?

A. Yes sir.

Q. Do you know whether anybody advised or urged him to go there?

A. Yes sir.

Q. Who?

A. Furey advised him to go there.

Q. Did you hear him?

A. Yes sir.

Q. Where was he when he gave him this advice?

A. The St. Regis Lunch Room, on Broadway & 47th Street.

Q. What did he tell your brother to do?

A. He said that the best thing for him to do was to go down—to call up Headquarters and get Mr. Mayer on the phone and say to him: "Mr. Mayer, you wanted to see me?" He said that was the best reason—that was the best thing for him to do; because Mr. Mayer would take it for granted that he is a young fellow, and would never think of doing that unless he was innocent of the crime.

Q. That if he would go down there he would be eliminated, and even make a good impression?

A. Yes sir.

Q. Do you know whether or not your brother went down there with Furey in the car, or by any other means?

355 A. No; all I know is that my brother went down there, and that Furey trailed my brother to see if any detectives were trailing Joe.

Q. But you did not go along?

A. No sir.

Q. Afterwards did you hear from the two of them that they had been down there, and that your brother went and saw the detective?

A. Yes sir.

Q. And that everything seemed to be all right?

A. Yes sir.

Q. Did your brother say anything, that he had been urged to get information; that he might share the reward?

A. No sir.

Q. He did not tell you that?

A. No sir.

Q. Now, did Furey or Kean ever tell you that they were working for the surety companies and trying to get a reward?

A. No sir. By the way, Kean mentioned up in the Hotel Claridge that he needed money.

Q. What did he need it for? Did he say he was short, or was flush?

A. No. We were talking about the big amount of stocks, and Mr. Kean says "It will come in handy; I am broke."

Q. He was broke?

A. Yes.

Q. Did he say that he had missed out on some other things that he had been working on?

A. No sir.

356 Q. He did not go into details?

A. No sir.

Q. And you never heard from him or from Furey anything about Binghamton?

A. No sir.

Q. Do you know whether or not your brother ever went to Cleveland with anybody?

A. Yes sir.

Q. Who did he go with?

A. With Furey.

Q. And do you know what the purpose or object was of going there?

A. Yes sir.

Q. What?

A. It was supposed to be a shake down in Cleveland.

Q. About what?

A. I don't know, sir.

Q. Some automobiles?

A. Oh yes—by the way: He told me Joe was going to come back with a brand new car.

Q. Who told you that?

A. My brother, Joe.

Q. Joe expected to come back with a new car as part of the result of the shake down?

A. Yes.

Q. He did not bring a new car back, did he?

A. No sir; he came back empty handed.

Q. Did Furey come back with a car?

A. Not that I know of.

Q. Did you hear anything about any shake down up in Birmingham or anywhere else?

A. No sir.

By Mr. Myers:

Q. Did you ever go away with Furey anywhere?

357

A. No sir.

By Mr. Dooling:

Q. Out of the city?

A. No sir.

Q. Or with Kean?

A. No sir.

Q. Or with anyone else?

A. Not out of the city,—I went out of the city with my brother.

By Mr. Myers:

Q. Did you ever go to Atlantic City?

A. Yes; with my brother Joe.

Q. When?

A. I went to Atlantic City——

By Mr. Dooling:

Q. The time Sullivan was arrested?

A. Right after Sullivan was arrested.

By Mr. Myers:

Q. Who sent you down there?

A. My brother Joe.

Q. Who sent Joe?

A. Oh yes; I think Mack sent Joe down there. Nick Cohen was supposed to meet Joe there later.

By Mr. Dooling:

Q. But he did not show up?

A. No; never met him there.

By Mr. Myers:

Q. Where did you stop?

A. We stopped at the Hotel Strand.

Q. How long did you stay there?

A. We stayed there four or five days.

Q. Under what names?

A. I registered as Irving Holt, and Joe registered as Joseph Holt.

358 Q. H-o-l-t?

A. Yes sir.

Q. Where did you get that name?

A. Well, Joe told me that he used that name some place else; that Nick Arnstein or Nick Cohen gave that name to him.

By Mr. Dooling:

Q. That is a good name, isn't it? The name of a publisher here.

A. I don't know.

By Mr. Myers:

Q. Did anyone communicate with you while you were down there?

A. No sir.

Q. Did Gondorf come to see you?

A. No sir.

Q. Did you ever meet the Gondorfs?

A. No sir.

By Mr. Dooling:

Q. Was anybody else along?

A. Yes sir.

Q. Who?

A. Herbert Bunora.

Q. The young man that is here with you?

A. No; his brother.

Q. His brother?

A. Yes sir.

Q. His younger brother?

A. Yes sir; that is his younger brother.

By Mr. Myers:

Q. Where was Rudie?

A. Rudie was home.

Mr. R. Bunora: I was home.

Q. Where is that bag that you used down there at Carlisle, Mellick's?

A. I don't know where it is now.

359 Q. Where did you leave it last?

A. The last I saw of it was when it was taken out of the taxicab.

Mr. J. Gluck: Who took it out of the taxicab?

Mr. I. Gluck: Either you or Furey.

Mr. J. Gluck: Where did he take it—who took it? And when did he take it?

Mr. I. Gluck: Furey took it out of the taxicab. Joe went and bought tickets for the Columbia Theatre.

Mr. J. Gluck: Where did he take it?

Mr. I. Gluck: Into the hotel. He said he was going to hold it to it.

Mr. J. Gluck: What did we do after that?

Mr. I. Gluck: We went to the Columbia Theatre, to the matinee.

By Mr. Dooling:

Q. Furey took the bag into the hotel?

A. Yes sir.

Q. Did he say anything about using it on another occasion?

A. Yes; he said we would save it.

Q. When you might have better luck?

A. He said he was going to save it until we had another job.

Q. What?

A. He was going to save it.

Q. Did you have anything to do with Wolf?

A. No sir; I never had anything to do with him.

360 Q. Or Herbie or Rudolph Bunora?

A. No sir; never had anything to do with them.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

361 JOSEPH GLUCK, being first duly sworn by Commissioner Gilchrist, testified as follows:

Examined by Mr. Myers:

Q. Will you please say whose photograph this is (indicating)?

A. Nick Cohen.

Q. Under what different names did you know him?

A. Nick.

Q. What else?

A. That is all; Mack and Nick.

Q. How do you know he is Nick Cohen?

A. Well, I was told so.

Q. Did he tell you so?

A. No; the man who introduced me told me—I didn't know him at first. The man that introduced me to him told me.

Q. Well, who introduced you?
A. Bill Stahl of Hoboken.

Photograph shown to the witness and identified by him as being that of Nick Cohen, marked Exhibit 1 for identification of this date.

Q. Do you recognize this photograph? (Showing witness photograph of Nicholas Arnstein.)

A. Yes sir.

Q. Who is that?

A. George. That is all I know him by.

Q. Who else was he known as; what other name?

A. George; and his right name is Nick Arnstein.

Q. Who told you it was Nick Arnstein; Stahl?

A. No; up in Washer's Cafe.

Q. Who told you?

A. The proprietor of Washer's Cafe, 86th Street & Broadway; we went there.

Q. He told you he was Nick Arnstein?

A. Nick Arnold.

322 Photograph identified by the witness as that of Nick Arnstein marked Exhibit 2 for identification of this date.

Q. Can you identify this photograph? (Showing witness photograph of W. W. Easterday.)

A. No sir; I never saw that before.

Q. Can you identify this photograph? (Showing witness photograph of Arthur Ecremont.)

A. I won't say sure.

Q. It is very important for us to know.

A. I can't say sure.

Q. Didn't you ever see that man in Montreal?

A. Is that the way he looks to-day?

Q. Well, who is he?

A. I don't know.

Q. Who did you have in mind as he?

A. Jim.

Q. Jim who?

A. Jim Kean.

Photograph of Arthur Ecremont referred to marked Exhibit 3 for identification of this date.

Q. Do you recognize this photograph? (Showing witness Exhibit 3 for identification of April 10th, 1920.)

A. No sir.

Q. You never saw that man before?

A. Not that I can recollect.

Q. Did you ever see this party? (Showing witness Exhibit 3 for identification of April 10th, 1920.)

A. No sir.

Q. Did you ever see this party? (Indicating photograph of Nick Cohen.)

A. Yes sir.

Q. What is his name?

A. That is Nick Cohen; another picture of Mack.

Marked Exhibit 4 for identification of this date.

Q. Did you ever see this party? (Indicating.)

A. No, sir.

Marked Exhibit 5 for identification of this date.

363 Q. Did you ever see this party? (Indicating photograph.)

A. No sir.

Marked Exhibit 6 for identification of this date.

Q. Did you ever see this party? (Indicating photograph.)

A. No sir.

Marked Exhibit 7 for identification of this date.

Q. Did you ever see this party? (Indicating photograph.)

A. No sir.

Marked Exhibit 8 for identification of this date.

Q. Did you ever see this party? (Indicating photograph.)

A. No sir.

Marked Exhibit 9 for identification of this date.

Q. Did you ever meet this party? (Indicating photograph.)

A. No sir.

Marked Exhibit 10 for identification of this date.

Q. Did you ever meet a man named Law?

A. No sir.

Q. Sure about that; Law?

A. I can't recollect meeting him.

Q. It is very important for us to know now.

A. Maybe I know him by another name; I don't know.

Q. Who else did you meet besides Nick Cohen and Nick Arnstein in these transactions?

A. I think nobody—oh, I met a man in Pennsylvania Station.

Q. What is his name?

364 A. I know now who he is; I know it was Sullivan. The night before we went to Washington; and I met him the next day in front of the Willard Hotel, talking to Nick Arnstein.

Q. In these bond transactions you never met anyone besides Nick Cohen, Nick Arnstein, and David W. Sullivan?

A. Nobody else.

Q. You are sure about that now?

A. Yes.

Q. That is not quite correct, besides you did meet Furey.

A. Not at the time of the bond transactions.

Q. No; in all the time, in connection with any of these transactions. I am trying to find out the various men you met. Now, you met Nick Cohen, Nick Arnstein, Ed. Furey?

A. Nick Cohen, Nick Arnstein, Furey.

Q. Jim Kean?

A. Jim Kean; and this here fellow here, I don't know his name.

Q. Haines; do you remember Dave Haines?

A. Yes; Haines; and Bill Stahl; and Byrnes; and McCready.

Q. What is Byrnes' first name?

A. B-y-r-n-e-s; in the Singer Building he had an office; I don't know his first name; I think it is Ed. Byrnes; I am not sure.

Q. Who else?

A. Bill Stahl; John Hogan.

Q. John Hogan?

A. 52 Broadway.

Q. Who else did you meet, now?

A. And the fellow in H. C. Pollack & Company; McCready I think his name is—or McKettridge; Harry Wolf; and the Bunero brothers; they are in the Tombs now; Herbert Bunero and Rudolph Bunero—you mean everybody?

Q. Yes. Did you ever meet William J. Fallon, the Lawyer?

A. No sir.

Q. Or Eugene F. McGee, the lawyer?

A. No sir.

365 Q. Did you ever meet William H. Washer?

A. Yes sir; that is in the cafe; Washer's cafe.

Q. Did you ever meet Phil. Kastel?

A. No sir. A fellow by the name of Perry.

Q. Did you ever meet Louis Bleet?

A. No sir.

Q. Did you ever meet John J. Morey?

A. No sir.—John J. Morey? No. I heard of his name; but I never spoke to him. I heard conversation between Ed. Furey and Kean about Morey, yes. He is supposed to be a politician of some sort; I don't know. Do you want Adler's name. That is not in the bond case; the extortion charge; Adler, and The Count.

Q. Who is The Count?

A. I don't know his name.

Q. Who do you believe him to be?

A. I don't really know. The only man who can tell you his name is Furey.

Q. What?

A. The only man who can tell you his name is Furey; but he won't tell.

Q. How do you describe him? Put it on the record; how tall?

A. Oh, he is over six feet.

Q. What is his age?

A. I should judge about 28 or 30—about 30.

Q. Weight?

A. About 200 pounds; light complexion; smooth face.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

Recess taken until 2:30 p. m.

New York, April 30th—(2.30 p. m.).

Hearing resumed.

Present:

The Commissioner (Mr. Tallman).

Mr. Myers.

JOSEPH GLUCK recalled.

Examined by Mr. Myers:

Q. What is your present home address?

A. 659 South Seventh Avenue, Mount Vernon.

367 Q. I show you a list of securities which the various surety companies and Stock Exchange houses claim have been lost, and I ask you to state in your own way everything that you know about any and all of these securities. (Handing witness list.)

A. You want me to tell you before I look at it; or is it all right to look over it?

Q. Take it right before you.

A. Allied Packers; that is only 25 shares there.

Q. Well, you state what the facts are.

A. I am almost positive it was a 100 share certificate; temporary certificate.

Q. What happened to it?

A. It was destroyed; all temporary certificates were destroyed.

Q. Who destroyed it?

A. I did.

Q. When was it taken?

A. I should judge about, the nearest that I can give you is about April or May.

Q. Last year?

A. Last year.

Q. April or May 1919? From whom was it taken?

A. I cannot say.

Q. Do you know the house?

A. No.

Q. Do you know the messenger involved?

A. Oh, I think it was my brother; I am not certain about it.

Q. Tell us all you know about that now, so we do not have to interrupt you.

368 A. Well, that was taken, and when I got it, it was just destroyed; burnt.

Q. How long after was it destroyed?

A. It may have been about two months afterwards.

Q. Why was it destroyed?

A. It wasn't any good.

Q. What?

A. It was a temporary certificate; it was not negotiable.

Q. Was that one of those certificates that you have to turn over for a good certificate?

A. Yes; have to turn over for a good certificate. They come out before the Gold issue.

Q. Do you remember who got that; what messenger got it?

A. I am not positive; I would not say; but I think it is my brother.

Q. Do you know where he got it from?

A. No, sir; I can't state.

Q. Was there any other messenger or messengers involved?

A. Yes; there was the messenger that gave it to us.

Q. That is what I want to get.

A. I don't know who it was though; I can't state.

Q. You have told us all you know about that?

A. Yes sir; that is all I know about that.

Q. Now, take up the second one.

369 A. 100 shares of American Beet Sugar. Will you please let me look at the Sullivan list? They are all right on the Sullivan list.

(Counsel hands witness list referred to.)

The Witness: 100 shares of American Beet Sugar.

Q. Common or preferred, or what; does it say?

A. No, it does not say.

Q. Tell us all you know about that.

A. That was gotten by—it was delivered—my brother took it from a boy.

Q. What boy?

A. I don't know what his name is. I don't know any of these boys.

Q. Do you know when he took it—which brother?

A. My brother.

Q. Irving?

A. Irving.

Q. He is the only brother you have?

A. Yes sir.

Q. All right. Do you know from what boy he took that?

A. No, I can't state that name. He don't know him either. Then, instead of delivering it, he takes it and keeps it. They would come up to him and say, if he was going in a building, "Will you take this up to so and so?" They did it right on the street.

Q. Now, it is going to be a very important thing as to whether these certificates were stolen from the houses.

A. No sir.

Q. Or voluntarily given over by the messenger of the house.

A. Voluntarily given over by the messenger.

Q. You had better speak with knowledge, because that is a very important legal distinction.

A. Yes sir.

Q. In these two cases so far, the certificates were handed over voluntarily by the messenger of the house?

A. Voluntarily, except in one case. That will be in everything except one case.

Q. And you will specify that one case when you come to it?

A. Yes sir.

Q. Tell us more about that American Beet Sugar now.

A. I turned that over to Nick Cohen; Nick Arnstein was there at the time.

Q. Where was this?

A. That was the American Beet Sugar.

Q. Where did you do this, I mean?

A. I don't know whether it was Baltimore or Washington; I can't say.

Q. Can you fix the time?

A. No sir.

Q. The month?

A. That is hard to do. There are so many.

371 Q. Anyway, you handed those 100 shares of American Beet Sugar over to Nick Cohen?

A. Yes sir.

Q. In the presence of Nick Arnstein?

A. Yes sir.

Q. In some city, which you will supply a little later?

A. Yes sir.

Q. Who else was present; Sullivan?

A. No; he was not present at that time—he never was present when I turned over any certificates.

Q. He was not?

A. No sir.

Q. No one was present except Cohen and Arnstein?

A. No sir.

Q. At no time; is that right?

A. That is right.

Q. Now, take up the third one.

A. American Can.

Q. How many?

A. 100 shares. That was given to The Count.

Q. Now, who is The Count?

A. I can find out this week, his name, the way I understand; unless they try to stall me off.

Q. First, describe him.

A. He is a big fellow, about six foot.

Q. Well, tell us some more about him. How much does he weigh?

A. About 200 pounds; light complexion; full face.

372 Q. Any mustache?

A. No mustache at the time.

Q. Any marks on his face?

A. I didn't notice any.

Q. What kind of a nose?

A. Roman nose.

Q. Eyes?

A. I don't know.

Q. Do you know his religion?

A. No sir.

Q. Describe his ears.

A. I don't know.

Q. Did you ever hear his name?

A. No sir.

Q. You never heard his name?

A. No sir.

Q. Never knew who he was?

A. I know he goes up to the St. Regis Restaurant. I just found this out to-day. He goes up to the St. Regis Restaurant, 50th Street & Broadway; and he generally goes up to Daly's.

Q. Tell us everything you know about The Count now. That is the man we want to get right away.

A. That is the man that was the extortioner. There is a man up at the Tombs who knows him now.

Q. Who is the man in the Tombs that knows him?

A. I don't know his name. He is on the fourth tier.

Q. Who in the Tombs knows him?

A. I don't know his name.

Q. Who is he; what is he up there for?

373 A. He knows Furey. He is up there on some kind of a shoplifting case I guess.

Q. A shoplifting case? Who is his lawyer?

A. I don't know; I will find that out.

Q. What tier is he in?

A. The fourth tier.

Q. Fourth tier; what cell?

A. I don't know.

Q. Describe him so that we can go up there and locate him.

A. When you come up there, call for me, and I will take you up.

Q. Now, The Count; tell us some more about The Count.

A. I don't know him. He came up there; that is the time when he shook me down.

Q. That is the man that was with Adler?

A. With Adler and Furey.

Q. When was this; give us the date?

A. New Years.

Q. New Years Day?

A. New Years Eve; or the day before New Years Eve—the 31st of December.

Q. Where did this take place?

A. 659 South Seventh Avenue, Mount Vernon.

Q. At your home?

A. Yes sir.

Q. That is the third lot: 100 American Can?

A. Yes sir.

Q. Did you give him anything else?

A. Yes.

374 Q. All right; we will come to them. Now take up No. 4.

A. American Car Foundry.

Q. How many?

A. 100 shares. I don't know whether that was given to Nick Cohen—that was given to Nick Cohen.

Q. Where?

A. I cannot state.

Q. When; can you say the month?

A. No.

Q. All right. Who else was present?

A. Nick Arnstein.

Q. Let me ask you here: Was Nick Arnstein present every time?

A. Every time I turned over certificates.

Q. You have identified those parties from their photographs, in this Court, haven't you?

A. Positively, yes sir.

Q. Take up the next item: No. 5.

A. American Cotton Oil. I don't know anything about that.

Q. How many shares?

A. 400 shares it says here. American Cotton Oil Co.

Q. You don't know anything about that?

A. No, I do not.

Q. Let us pass on to the next one, No. 6.

A. American Drug Syndicate.

Q. How many?

A. 200 shares.

375 Q. What do you know about that?

A. I don't know anything about that.

Q. Now, let us go back a moment: As I recall it, I want to get this record straight so we do not have to keep going back: You did not personally take the Allied Packers from anyone?

A. My brother took it from the boy.

Q. And then he gave it to you?

A. Then he gave it to me.

Q. And you gave it to Cohen?

A. No sir; that was destroyed.

Q. Oh, that is the one that was destroyed?

A. Yes; temporary certificate.

Q. That is right. Now, the 100 American Beet Sugar your brother took from a boy and gave it to you, and you gave it to Nick Cohen?

A. Yes sir; Cohen and Arnstein.

Q. And the third: 100 American Can, did you get that from your brother?

A. No sir.

Q. Where did you get that?

A. A fellow by the name of Gus. Zeitman.

Q. How do you spell that; Z-e-i-t-l-i-n?

A. Zeitman.

376. Q. Z-e-i-t-m-a-n; is that right?

A. I guess that is about right.

Q. Where is he?

A. I don't know where he is.

Q. How could we find him?

A. I don't know of any way you can find him.

Q. Where does he live?

A. I don't know.

Q. Where does he work?

A. I don't know where he works. He never did work.

Q. Well then, he gave you those 100 shares; you don't know where he got them from?

A. No.

Q. Do you know where he gave them to you, and when?

A. Oh, he gave me that in the Pennsylvania Hotel.

Q. When?

A. October, November—when was it the Sullivan case first came out? November?

Q. The arrest was in November.

A. That was in December, this was.

Q. How will we find Zeitman?

A. That I don't know.

Q. How would you find him? What would you do to find him?

A. I would go uptown and look for him around 40th Street, 42nd Street.

Q. Don't you know what his business is?

A. No sir.

377. Q. Well, did he do anything at all?

A. No sir.

Q. Where does he hang out?

A. Around 42nd Street there; sometimes in front of the Palace Theatre, 47th Street.

Q. How old is he?

A. A fellow about 26.

Q. Tall, or how?

A. No; he is about five foot four; slim.

Q. What weight?

A. Oh, about 130 pounds.

Q. Dark?

A. Dark complexion.

Q. Clean shaven?

A. Clean shaven. He generally wears a derby.

Q. A large nose?

A. Yes.

Q. What kind of eyes?

A. I don't know.

Q. Now, the 100 shares of American Car Foundry, you said you gave that to Cohen?

A. Yes sir.

Q. Now, where did you get that?

A. From my brother.

Q. Where did he get it?

A. He got it off a messenger.

Q. What is his name?

A. I don't know the messenger's name.

Q. Now, the next two you don't know anything about?

A. No sir.

378 Q. Let us take up No. 7.

A. Did you take the American Drug?

Q. Yes. You said you did not know anything about that; is that right?

A. Yes. American Hide & Leather.

Q. How many?

A. 100 shares. Do you mind if I skip that for a while? I will go over it again.

Q. All right. No. 8?

A. American International Corporation common; 100 shares.

Q. Where did you get those?

A. I am not certain about that.

Q. Well, what did you do with it? Do you know what you did with it?

A. No sir; I can't remember.

Q. You don't remember anything about that right now?

A. No sir.

Q. We will come back to that. No. 9?

A. American Locomotive common.

Q. That is No. 9?

A. Yes sir.

Q. How many?

A. 6 shares.

Q. 6 shares of American Locomotive common?

A. Yes sir.

Q. Where did you get those?

A. I don't know where I got them. I don't know anything about that at all.

379 Q. No. 10?

A. American Safety Razor Corporation.

Q. How many?

A. 750. And there is some here without any—I don't know the amount.

Q. Well, how many are there?

A. 750 shares.

Q. 750 plus?

A. Yes. I don't know anything about that.

Q. You don't know anything about those either?

A. No sir.

Q. No. 11?

A. American Ship. & Commerce.

Q. How many shares?

A. 50 shares.

Q. Where did you get those?

A. I did not get them.

Q. You don't know anything about them?

A. No sir.

Q. No. 12?

A. American Smelting & Refining.

Q. How many?

A. 100 shares of common; 100 shares preferred.

Q. Where did you get those? That is 200 all together?

A. Yes. 100 shares of common and 100 preferred. I got those from my brother. He got them from a boy.

Q. What boy.

A. I don't know.

Q. Your brother will know, won't he?

A. No; he won't know them; and they don't know him.

380 Q. How did they come to give them to your brother?

A. He would be walking along the street—he was working down there. And he would see him going into a building, and he would say "Are you going up to so and so?" And he said "Yes." And they said "Just give these to them," without my brother asking them. That is the way they done. These went to Nick Cohen in the presence of Nick Arnstein.

Q. What did?

A. The 100 shares of American Smelting & Refining preferred.

Q. You gave those to Nick Cohen and Nick Arnstein?

A. Yes sir.

Q. Next; No. 13?

A. There is 25 shares of American Smelting. I don't know anything about that.

Q. That is No. 13? How many shares?

A. 25 shares of common.

Q. American Smelters?

A. Common, yes.

Q. You don't know anything about those?

A. No sir.

Q. No. 14?

A. 500 shares of Atlantic Gulf & West Indies.

Q. Where did you get those?

A. Off my brother.

Q. Where did he get them?

A. He got them off a boy.

381 Q. You don't know what boy?

A. No sir. And they were given to Nick Cohen in around month of October.

Q. Where?

A. In Pennsylvania Station.

Q. New York?

A. New York.

Q. 33rd Street?

A. 33rd Street.

Q. Who else was present?

A. Nick Arnstein, in the stateroom.

Q. Arnstein was always present?

A. Always present.

Q. He always saw you hand over these certificates to Nick Cohen?

A. Yes sir.

Q. But you never handed them personally to Arnstein?

A. Let me get this straight. I handed them over to him, and then he put them in the grip, see?

Q. You handed them to whom?

A. To Nick Cohen, and Nick Arnstein looked them over too.

Q. Now I want to get that: You would first hand them to Cohen, and then Cohen would put them in the grip, and Arnstein would look them over?

A. No; the one I mention now; at that particular time.

382 Q. Those 500 shares of Atlantic Gulf & West Indies?

A. Those 500.

Q. What do you mean by "look them over"; have them in his hands?

A. Yes. He never saw them before.

Q. This was in New York City?

A. This was in New York City; Pennsylvania Station.

Q. Can you give us the date?

A. October 16th I think. That was the first trip to Washington—or October 13th.

Q. What time?

A. 12 o'clock; 12:15 a. m. train.

Q. That would be 12:15 a. m. on the 14th?

A. Yes sir.

Q. Past midnight?

A. Yes sir.

Q. Now, you say that those were the only three persons present: You, Nick Cohen and Nick Arnstein; is that right?

A. Yes sir.

Q. And Nick Arnstein actually had those 500 shares in his hands; is that right?

A. Yes sir. Here is 200 shares more of Atlantic Gulf & West Indies, that I don't know anything about.

Q. The 500 shares of Atlantic Gulf were taken from whom?

A. From a boy; it was delivered to my brother. The certificates were in the name of K. P. Goldschmidt & Co. I don't know
383 whether it was delivered to them. The certificates were made out in their name.

Q. There is 200 more Atlantic Gulf & West Indies?

A. I don't know anything about them.

Q. No. 16?

A. Atlantic Refining preferred.

Q. How much?

A. 10 shares. I will skip that for a while.

Q. You are skipping the 10 Atlantic Refining?

A. Yes sir.

Q. Now, No. 17?

A. Baldwin Locomotive.

Q. How many?

A. 200 shares. I only know of 70 shares.

Q. The 70 shares you got from whom?

A. I got from Gus. Zeitman I think it was.

Q. Did you get that yourself?

A. No; I never got anything myself.

Q. You got it from your brother?

A. No sir; that was from Gus. Zeitman.

Q. He delivered it to you direct?

A. Yes sir.

Q. He gave it to you?

A. Yes sir.

Q. Do you know who they belonged to?

A. They belonged to Clark, Childs & Co. It is on here.

384 Q. You only know of 70 shares of the 200?

A. Yes sir.

Q. And 130 you don't know anything about?

A. No; I don't know anything about them.

Q. Who got those 70 shares?

A. Nick Cohen and Nick Arnstein.

Q. You say them together. Did you actually give them to both?
You handed them to Nick Cohen, didn't you?

A. I handed them to Nick Cohen.

Q. Let us get that straight: You handed them to Cohen?

A. Yes sir; I handed it to Cohen.

Q. Where?

A. The Baldwin Locomotive? I don't know; I think it was in
Baltimore; I am not sure, or Boston.

Q. Can you fix the time?

A. About between ten and eleven o'clock in the morning.

Q. You don't know the date, or the week, or the month?

A. No. I was stopping at the Touraine Hotel.

Q. The Touraine?

A. Yes; in Boston.

Q. Can you fix the date?

A. No sir.

Q. Did they register with you?

A. No; I was the only one that registered at that hotel.

385 Q. No. 18?

A. Baltimore & Ohio Railroad Co. I don't know anything
about that.

Q. No. 19?

A. 100 shares of Bethlehem Steel B. I don't know if it is B. If

it is B, I don't know anything about it. It just says "Bethlehem." I got 100 shares of Bethlehem B; I guess it must be the same thing if that is the only one down as missing. That was given to me by my brother, and it was given to Harry Wolf.

Q. By you?

A. By me, yes sir.

Q. Why did you give it to Harry Wolf?

A. Why? He was supposed to dispose of it.

Q. Well, did he?

A. No sir. I never got anything back from him. I only got \$100 from him for those, and \$20,000 worth of other bonds.

Q. Who is he?

A. He is indicted.

Q. Well, who is he?

A. He lives—his father has got a women's wear store in Prospect Avenue & Webster Street.

Q. You don't know the number?

A. I can tell you that later; I will look it up in the phone book.

Q. How old is he?

A. Harry Wolf? I don't know; he must be about 24.

386 Q. Is he out on bail?

A. He is out on \$20,000 bail.

Q. You gave him all together about \$20,000 worth of stuff?

A. Yes sir.

Q. No. 20?

A. 10 Booth Fisheries Co. common. I don't know anything about that.

Q. No. 21?

A. There is only 250 shares down here. I know of 700 Boston Union Oil.

Q. 700 shares you know of; and there are 250 down there?

A. Yes sir.

Q. Let us take the 700. Where did they come from; from your brother?

A. No sir.

Q. From whom?

A. I don't know.

Q. Who did you give them to?

A. The Count.

Q. When?

A. The day before New Year's; New Year's Eve; December 31st.

Q. Did you give them to him voluntarily?

A. Not voluntarily, no sir. He forced me.

Q. You mean he forced you?

A. Yes sir.

Q. Do you want to tell us about that while we are at it?

A. I can tell you later. There is a lot to it. It will take a lot of time.

Q. All right. No. 22?

387 A. 100 shares of British-American Tobacco common. I don't know anything about that.

Q. No. 23?

A. Brunswick Ter. Ms. Co.

Q. How many shares?

A. 200. I don't know anything about that.

Q. You don't know anything about those?

A. No sir.

Q. No. 24?

A. Butte Copper & Zinc Co.

Q. How many?

A. 180 shares. I don't know anything about that.

Q. No. 25?

A. Butte & Superior Mining Co.; 20 shares. I don't know anything about that. All those that there is mentioned there, were all by one firm. I guess one fellow ran away with all that stuff: Goldberg & Heim.

Q. We will come back to that. No. 26?

A. 100 Central Foundry. I don't know anything about that either.

Q. No. 27?

A. 10 shares Central Leather Co. common. I don't know anything about that.

Q. No. 28?

A. 10 shares of Chesapeake & Ohio Railroad. I don't know anything about that.

Q. No. 29?

A. C. C. C. & St. Louis preferred. I don't know anything about that.

Q. No. 30?

A. 100 shares of Chicago, Milwaukee & St. Louis Railroad.

Q. What about that?

A. I don't know anything about that.

Q. No. 31?

A. 400 shares of Chicago Pneumatic Tool. I don't know anything about that.

Q. No. 32?

A. 500 shares of Chino Copper. I don't know anything about that.

Q. No. 33?

A. 20 shares of Coca-Cola Co. common. I don't know anything about that.

Q. No. 34?

A. 15 shares of Colorado Fuel & Iron common. I don't know anything about that.

Q. No. 35?

A. 10 shares of Commonwealth Petroleum common. That is familiar to me. I am pretty certain I gave that to Nick Cohen. It is not down here. (Referring to a list.) I won't swear to it, though.

Q. Let us pass that. No. 36?

A. 5 shares of Continental Can Co. common. I don't know anything about that.

Q. No. 37?

A. 100 shares of Corn Products Refining Co. common. I don't know anything about that.

389 Q. No. 38?

A. 200 shares of Crucible Steel common. I got that of Herbie Bunero.

Q. Where did he get that?

A. He got that from Clark, Childs. He gave it to me. I delivered it to Nick Cohen in the presence of Nick Arnstein.

Q. No. 39?

A. 10 shares of Cuba Cane Sugar. I don't know anything about that.

Q. No. 40?

A. 100 shares of Delaware & Hudson. I don't know anything about that.

Q. No. 41?

A. Denver & Rio Grande Railroad Co. preferred.

Q. How many?

A. There are 300 shares down here. I only know of 200 shares. That was gotten by this fellow Gus. Zeitman.

Q. From whom?

A. From a messenger.

Q. You don't know what messenger?

A. No. Delivered to me; and by me to Nick Cohen and Arnstein.

Q. No. 42?

A. 100 shares of Durham Hosiery Mills preferred. I don't know anything about that.

Q. No. 43?

A. 100 shares of Endicott-Johnson Co. Given to me by my brother; delivered to Nick Cohen in the presence of Arnstein.

Q. No. 44?

A. 50 shares of Firestone Tire & Rubber Co. I don't know anything about that.

390 Q. No. 45?

A. 100 shares of Goodrich Tire & Rubber Co. preferred. I don't know anything about that.

Q. No. 46?

A. 300 shares of B. F. Goodrich Co. I don't know if I gave him two or 300 shares. But I gave it to Nick Cohen. I don't remember who I got that from, either. I gave 2 or 300 shares to him. It says 300 down here, but I only can remember 200. But it might have been 300.

Q. No. 47?

A. 100 shares of Grape-Ola Products. I don't know anything about that.

Q. No. 48?

A. 130 shares of Great Northern Railroad preferred. I cannot remember anything about that.

Q. No. 49?

A. 100 shares of Guffey, Gillespie Oil Co. That was given to me by my brother, and given to Nick Cohen in the presence of Arnstein.

Q. No. 50?

A. Hayden Chemical Co.; 300 shares. I don't know anything about that.

Q. No. 51?

A. 400 shares of Home Oil Refining Co. I don't know anything about that.

Q. No. 52?

A. 100 shares of Imperial Tobacco Co. of Great Britain & Ireland. I don't know anything about that.

Q. No. 53?

A. 25 shares of Indian Packing Co. I don't know anything about that.

Q. No. 54?

A. International Agricultural Corporation.

Q. How many?

A. 100 shares. I don't know anything about that.

Q. No. 55?

A. International Mercantile Marine preferred; 100 shares. I think that was given to Nick Cohen in the presence of Arnstein.

Q. When did you get that?

A. I don't know who I got that from either; but I remember the stock. That is all.

Q. No. 56?

A. 100 shares of International Nickel. I don't know anything about that.

Q. No. 57?

A. 100 shares of Invincible Oil. I don't know anything about that.

Q. No. 58?

A. 25 shares of Island Oil Transport. I don't know anything about that.

Q. No. 59?

A. Kennicut Copper Co.

Q. How many?

A. 20 shares.

Q. Do you know anything about that?

A. I don't think so.

392 Q. No. 60?

A. 10 shares of Lackawanna Steel. I don't know anything about that.

Q. No. 61?

A. Livingston Oil Co. common; 200 shares. I don't know anything about that.

Q. No. 62?

A. 50 shares of Loft's, Inc. I don't know anything about that.

Q. No. 63?

A. 20 shares of Lehigh Valley Railroad. I don't know anything about that.

Q. No. 64?

A. 1,000 shares of McNamara Mining & Milling Co. I don't know anything about that.

Q. No. 65?

A. 20 shares of Merck & Co. I don't know anything about that.
Q. No. 66?

A. 100 shares of Mexican Petroleum. That was given to me by somebody. I don't know who; that was given by me to Nick Cohen in the presence of Nick Arnstein. I only gave them 100 shares. There is 300 down here.

Q. Then you must have given him 300?

A. I gave him 400 shares of that. He has only got 300 down. I gave Nick Cohen 400 shares of Mex. Pet.

Q. Well, would it indicate that Sullivan and Bowles are holding back some?

A. Must be. They have only got 300 down here, and there is 400 more missing. It was delivered in one lump; it was one
393 delivery of 400 shares. Naturally, I gave them the 400. I would not take out 100 of it. But when I gave them the 400, he split them all up. When I gave them to him I certainly didn't try to hold any back. I guess he must have taken it to Baltimore—I found out later that he kept me in the dark all the time, about this affair.

Q. We will come back to that more in detail, a little later. No. 67?

A. 1,000 shares of Michigan Central Railroad. I don't know anything about that.

Q. You don't know anything about that?

A. No sir.

Q. No. 68?

A. 60 shares of Midvale Steel & Ordnance Co. I don't know anything about that.

Q. No. 69?

A. 20 shares of New York Central Railroad. I don't know anything about that.

Q. No. 70?

A. 28 shares of New York, New Haven & Hartford. I don't know anything about that.

Q. No. 71?

A. 100 shares of New York & Harlem Railroad. I don't know anything about that.

Q. No. 72?

A. 800 shares of Nipissing Mines Co. I don't know anything about that.

Q. No. 73?

A. 200 shares of Ohio City Gas Co. Given to me by my
394 brother, and delivered to Nick Cohen in the presence of Arnstein.

Q. Where did your brother get that from; Doherty's?

A. I don't know. He got it from a boy, like he got them from boys all the time.

Q. No. 74?

A. 320 shares of Pennsylvania Railroad. 300 shares was given to Nick Cohen. That was given to me by my brother, and given to Nick Cohen in the presence of Arnstein.

Q. What became of the 20 shares? 20 unaccounted for; is that right?

A. Yes. I will tell you though, Mr. Myers: If that was all in one lot, if that was one delivery, there can't be any missing; I am pretty certain of it. All of it must have been to Nick Cohen. I can't account for the other 20 shares; but it must have been there, if it was all one delivery; you understand what I mean?

Q. No. You know how many you gave to Cohen, don't you?

A. Well, I know of 300 so far; I have stated that too. There must have been 20 more that I didn't know of. If it was one delivery—if the house is missing on that same day the other 20 shares, it was in that bunch. So Nick Cohen has got it.

Q. No. 75?

395 A. It does not say how many shares; Pierce Arrow Co.

Q. Do you know anything about that?

A. No sir.

Q. No. 76?

A. 100 shares of Pond Creek. That was given to me by my brother, and given to Nick Cohen in the presence of Arnstein.

Q. No. 77?

A. 100 shares of Punta Alegre Sugar Co. common. I don't know anything about that 100 shares.

Q. No. 78?

A. 27 shares of Porto Rican Tobacco. I don't know anything about that.

Q. No. 79?

A. 400 shares of Producers & Refiners Corporation. I know of some of that. I cannot place it.

Q. No. 80?

A. 20 shares of Railway Steel Spring Co. I don't know anything about that.

Q. No. 81?

A. 20 shares of Reading Co. common. I don't know anything about that.

Q. No. 82?

A. 100 shares of Republic Iron & Steel Co. That was delivered to Nick Cohen.

Q. Where did it come from?

A. I cannot state.

Q. No. 83?

A. Republic Rubber Co., 103 shares. I don't know anything about that.

Q. No. 84?

396 A. 50 shares of Reynolds Tobacco Co. That was given to me by Gus. Zeitman; that was delivered to Nick Cohen in the presence of Arnstein.

Q. No. 85?

A. 100 shares of Royal Dutch. I don't know anything about that.

Q. No. 86?

A. 211 shares of Rubber. It does not say what kind.

Q. 200 Rubber?

A. I don't know anything about that.

Q. You don't know anything about the rubber?

A. No sir.

Q. No. 87?

A. 175 shares of Sinclair Con. Oil Co.

Q. Do you know anything about that?

A. I can't place that, no sir.

Q. No. 88?

A. 25 shares of Sinclair Gulf & Refining Co. I don't know anything about that.

Q. No. 89?

A. 500 shares of Southern Pacific. That was given to me by I don't know who; and it was delivered to The Count.

Q. Where did you get those?

A. I don't know where I got that from.

Q. Where did you give it to The Count?

A. Up in my house.

Q. On December 31st 1919. Is that when you gave it to him?

A. Yes sir.

397 Q. No. 90?

A. 10 shares of Southern Railway Co. common. I don't know anything about that.

Q. No. 91?

A. 200 shares of South American Gold & Platinum. I don't know anything about that.

Q. No. 92?

A. 22 shares of Southern Porto Rico Sugar.

Q. Do you know anything about that?

A. No sir.

Q. No. 93?

A. 5 shares of Spicers Manufacturing Co. preferred. I don't know anything about that.

Q. No. 94?

A. 23 shares of Standard Milling Co. I don't know anything about that.

Q. No. 95?

A. 400 shares of St. Louis & San Francisco Rail. I know of 300 shares.

Q. Who did you give the 300 shares to?

A. Nick Cohen, in the presence of Arnstein.

Q. What became of the other 100?

A. I don't know.

Q. No. 96?

A. 50 shares of Stromberg. I know something about Stromberg temporary certificate. I don't know whether it was 50 or 100 shares. Just make a note of it. I don't know if that was the one. That was a temporary certificate, and it was destroyed.

Q. By you?

A. Yes sir. I am not sure if it was 50 or 100; but I remember it was destroyed.

- 398 Q. Where did that come from?
A. That I can't state. That was given to me by my brother, but I don't know who it came from.
- Q. You destroyed all temporary certificates?
A. All except the United Retail Stores. That was given to Nick Cohen.
- Q. No. 97?
A. 300 shares of Studebaker, Inc. common. He has got down 100. I don't know whether it is 100 or 300—it is 100 shares of Studebaker.
- Q. You gave the 100 shares to Nick Cohen?
A. Yes sir.
- Q. The other 200, what about them?
A. I don't know. Only, if it is in the same delivery, it is the same thing. I can't state.
- Q. You don't know where we could find out?
A. If it was, you can find out from the house, that it was delivered the same day. If it was delivered the same day, with the same boy, it has got to be one delivery. I know of 100 of those 300.
- Q. No. 98?
A. Surety Tire & Rubber.
- Q. How many?
A. 200 shares. I don't know anything about that.
- Q. No. 99?
399 A. 100 shares of Tennessee Copper and C. H. Co. I don't know anything about that.
- Q. No. 100?
A. 200 shares of Texas Company preferred. Those were given to me by two different people: One by my brother, and one by Gus. Zeitman. Different deliveries. They were 100 each; 200 shares. I gave those to Nick Cohen in the presence of Nick Arnstein.
- Q. No. 101?
A. 600 shares of Union Pacific. I know of 500 shares of that. That was given to Nick Cohen and Nick Arnstein.
- Q. And the other 100 shares?
A. I don't know anything about that.
- Q. Where did they come from?
A. I can't remember just now.
- Q. No. 102?
A. United Carbon & Carbide; 37 shares. I don't know anything about that. I wish to correct my testimony and say that in reference to No. 101, there is 600 shares of Union Pacific, instead of 500 which I gave to Nick Cohen.
- Q. No. 103?
A. 100 shares of United Retail Stores, Inc. common. I know of a temporary certificate; that is the one. That was given to Nick Cohen and Nick Arnstein.
- Q. That is 100 shares?
A. Yes sir.
- 400 Q. Where did that come from?
A. That came from Bamberger, Loeb & Co.

Q. I mean, what boy?

A. Oh, a messenger boy.

Q. What boy?

A. Given to my brother.

Q. And by your brother to you?

A. Yes sir.

Q. No. 104?

A. U. S. Food Products, 100 shares common. I can't remember anything about that. This is not a complete list. He has only got 500 shares of Union Pacific here, and you have got 600 there (indicating).

Q. No. 105?

A. 35 shares of U. S. Industrial Alcohol Co. I don't know anything about that.

Q. No. 106?

A. 300 shares of U. S. Rubber common; and 10 shares of preferred. I don't know anything about that. There is a bond I know about.

Q. No. 107?

A. 100 shares of Wabash Pittsburgh & West Virginia common.

Q. Where did you get them, and what became of them?

A. I don't know anything about that.

Q. No. 108?

A. 100 shares of Wheeling & Lake Erie. Given to me by my brother, and given to Nick Cohen and Nick Arnstein. That was taken from a boy.

Q. No. 109?

A. 107 shares of White Motors. I don't know anything about that.

401 Q. No. 110?

A. 100 shares of Worthington Pump. That was given to Nick Cohen and Nick Arnstein. And there is 15 more I don't know anything about.

Q. What became of the 100 shares?

A. They were given to Nick Cohen and Nick Arnstein. There is 15 other shares that I don't know anything about. That is 115 all together.

Q. No. 111?

A. Allegheny Co.

Q. How many?

A. It don't state. I don't know anything about that.

Q. No. 112?

A. 600, American Tel. & Tel. That is all wrong; this list ain't made up right. That is a 500 dollar bond. That was given to Harry Wolf. 500 dollar bond, 6%, maturity date, 1924.

Q. Given to whom?

A. The 500 dollar bond was given to Harry Wolf.

Q. What is the 100?

A. There is a 100 dollar bond; I don't know anything about that. That is 1925.

Q. Where did you get the 500 dollar bond?

A. That is from my brother; that was given to Harry Wolf.

- Q. No. 113?
 A. Two 1,000 dollar bonds; Baltimore & Ohio. Do you want the maturity dates on these? Because there is different kinds of bonds.
- 102 Q. Yes.
 A. 1933.
- Q. What series; does it say?
 A. It does not say; it says 12/1/1933.
- Q. Where did that come from, and who did that go to?
 A. That went to Harry Wolf.
- Q. And where did that come from?
 A. My brother.
- Q. How old is your brother?
 A. 20 years old.
- Q. No. 114?
 A. Baltimore & Ohio Railroad; the same thing.
- Q. How many?
 A. A 1,000 dollar bond and a 100 dollar bond. I don't know anything about that.
- Q. No. 115.
 A. One bond of \$1,000; Bethlehem Steel.
- Q. What series?
 A. 5's; 1926. That was given to Harry Wolf. I don't know who gave it to me.
- Q. No. 116?
 A. 1,000 dollar bond, Buffalo Railway Co. I don't know anything about that.
- Q. No. 117?
 A. Capitol Traction Co. I don't know anything about that. 500 dollar bond.
- Q. No. 118?
 A. 8 bonds of the Chesapeake & Ohio, all together \$5,000.
- Q. When do they mature? Different maturity dates?
 A. 1946. I don't know anything about them.
- Q. Were those \$5,000 of bonds, of the Chesapeake & Ohio given to Harry Wolf?
 A. No. I don't know anything about them.
- Q. No. 119?
 A. \$3,000 of bonds, Chicago, Burlington & Quincy Railroad. I don't know anything about that.
- Q. No. 120?
 A. 500 dollar bond, City Service Co.
- Q. Do you know anything about that?
 A. Yes. That went to Harry Wolf. I don't know who gave it to me, though.
- Q. No. 121?
 A. City of Paris, 1,000 dollar bond. I don't know anything about that.
- Q. No. 122?
 A. City of Pittsburgh. I don't know anything about that.
- Q. How much; \$1,000?
 A. It does not state.

Q. No. 123?

A. City of Portsmouth Water Works; 600 dollar bond. I don't know anything about that.

Q. No. 124?

A. City of Vancouver, 5½. I don't know anything about that.

Q. There is no use giving us anything where you did not handle it.

A. You don't want me to read them off?

Q. Yes; but you need not give us all the detail — No. 125?

A. Galena Signal. I don't know anything about that.

Q. How much?

A. One 500; and one I don't know.

404 Q. No. 126?

A. General Electric notes. I don't know anything about that. 1,000 dollar bond.

Q. No. 127?

A. All together 6 bonds; Great Northern; 1920. I don't know anything about that.

Q. No. 128?

A. 1,000 dollar bond of Hudson & Manhattan Railroad. I don't know anything about that.

Q. No. 129?

A. 5 Interborough. It does not state here who they were supposed to go to. I know that one was delivered; but it was delivered to Harry Wolf. Five 1,000 dollar bonds of the Interborough.

Q. Where did they come from?

A. I don't know where they came from. I don't know any of these bonds at all, where they came from. 13 more I don't know anything about.

Q. No. 130?

A. 2 Iowa Central Railroad Co. bonds. 2 bonds, they are registered; 1,000 dollar bonds. They were given to Nick Cohen and Nick Arnstein.

Q. They have been located.

A. 2 registered bonds. Were they registered; two names on?

Q. Yes.

A. Those were the only two registered bonds. That leads us up to—if that was located, there is a lot of bonds that were delivered to a man in the hospital; at the Post Graduate Hospital, on the second floor. I don't know his name; a Jewish name.

405 Q. Mortis?

A. No. It is something with a "stein" on the end of it. I can't remember the name. I wasn't up to see him.

Q. Tell us that, because that is very important now. Tell us all about that.

A. Yes, I will tell you: When he was up there in the hospital sick—

Q. (Interrupting). When was that?

A. That was around October—around September; in the month of September, he was sick; he was on the second floor, his room was a private room.

Q. What was the matter with him?

A. That I can't state.

Q. What was he there for?

A. He was sick; I don't know what was the matter with him. I guess it was an operation; I am not certain.

Q. Do you know the name of the doctor?

A. No sir; I never was up to him. I was downstairs; I was only at the information desk.

Q. What street is that?

A. On Second Avenue, I think it is—where is the Post Graduate? 20th Street; somewheres around there.

Q. Well, who took him up?

A. Nick Cohen; that is, without Nick Arnstein.

406 Q. You don't know the man's name?

A. No sir.

Q. It was not Blaustein, was it?

A. You can look it up in the hospital book there; a broker.

Q. Was he a broker?

A. That is what he told me; he was a broker.

Q. What did he give him?

A. He gave him some bonds.

Q. How much?

A. It amounted to about seven or \$8,000 worth.

Q. Do you know where that broker's office is, or anything about him?

A. No sir.

Q. New York man?

A. Yes; he is a New York man, because the bonds were left with him, over night.

Q. Dinkelspiel? What did you say his last name ended with?

A. "Steel" or "stein."

Q. Was it Dinkelspiel?

A. I could not remember. I won't say, because I don't remember.

Q. Is he a little fellow with glasses?

A. I never saw him.

Q. Now we will continue with this list. No. 131?

A. Island Refining Co.

Q. How many?

A. 1,000 dollar bond. I don't know anything about that.

407 Q. No. 132?

A. \$600 worth of Japanese Government. I don't know anything about that.

Q. No. 133?

A. Lake Shore, Michigan, Southern Railway; 1,000 dollar bond. That was given to Harry Wolf.

Q. Is that all that was there; \$1,000?

A. 1,000 dollar bond.

Q. No. 134?

A. Lehigh Valley. I can't give you the exact date; but you can look it up. I don't know if that will give you any help, the date

that he got those bonds. He was sick; Nick Cohen called up, on 14th Street; he called up Long Distance and got Bridgeport; from a cigar store right next to the saloon on the corner of Third Avenue & 14th Street. I don't know what the name of it is. 1,000 dollar Lehigh Valley Railroad, 4½. I don't know anything about that.

Q. No. 135?

A. \$2,900 worth of Liggett & Myers Tobacco. I don't know anything about that.

Q. No. 136?

A. P. Lorillard Tobacco.

Q. Do you know anything about that?

A. No; I don't know anything about that.

Q. No. 137?

A. Michigan Central, 1,000 dollar bond. That may have
408 been given to Harry Wolf. I got some names I want to give you too, to who he gave those bonds, Wolf.

Q. No. 138?

A. Missouri, Kansas & Texas; 1,000 dollar bond. I don't know anything about that. There is 5 more here with no amounts. I don't know anything about them.

Q. No. 139?

A. 3,000 dollar Missouri Pacific. I know of 2 or 3. They went to Harry Wolf.

Q. No. 140?

A. New Jersey Power & Light went to Harry Wolf; one bond of \$1,000.

Q. No. 141?

A. Texas & Mexican Railroad. I don't know anything about that; 500 dollar bond.

Q. No. 142?

A. 100 dollar Pennsylvania. I know of \$5,000 worth of bonds; but there is only 100 down here for Pennsylvania.

Q. What is the next you have got there? No. 142 is what; Pennsylvania Railroad?

A. Yes sir.

Q. Tell us all about that.

A. There is a 100 dollar bond here. I don't know anything about that. I know about \$5,000.

Q. Tell us about the \$5,000 of bonds?

A. They are a delivery from or a delivery to Keech, Lowe & Co.—supposed to be delivered to Keech, Lowe & Co.

Q. Tell us all about that.

409 A. They were given to Harry Wolf?

Q. By you?

A. Yes sir. They have got this all wrong here. They have got the numbers here from 53 to 75; that is 5 bonds; that is \$5,000 worth of bonds.

Q. Those \$5,000 worth of bonds went to Harry Wolf?

A. Yes sir.

Q. Who got them? Where did they come from; your brother, or Zeitman?

A. I don't know who it came from.

Q. We have got to get this right. We have got to trace these back, don't you see?

A. You can trace that with the bond. Sometimes, you see, somebody got it; and maybe some other boy got it.

Q. No. 143?

A. Pere Marquette; 1,000 dollar bond. I don't know anything about that.

Q. No. 144?

A. Province of Alberta. I don't know anything about that. That is \$1,300 worth of bonds; 4 bonds.

Q. No. 145?

A. Russian Government. I don't know anything about that.

Q. No. 146?

A. Sinclair Oil bonds; \$5,000 worth of bonds. I don't know anything about those.

Q. No. 147?

410 A. Southern Pacific 1934; 10 of them. I don't know anything about them.

Q. No. 148?

A. St. Clair Township, Columbia County, Ohio; \$1,000 worth of bonds; 2 bonds.

Q. No. 149?

A. St. Louis & San Francisco 500 dollar bond. I don't know anything about that.

Q. No. 150?

A. \$3,000; Studebaker. I don't know anything about that.

Q. No. 151?

1,000 dollar bond. I. \$1,000; Third Avenue. That bond went to Harry Wolf;

Q. Where did it come from; your brother?

A. That is long ago; I don't know where it came from.

Q. No. 152?

A. Toronto, Canada. I don't know anything about that.

Q. No. 153?

A. \$18,000 worth of United Kingdom of Great Britain & Ireland bonds. I will trace some of those for you. 3 of those bonds went to Harry Wolf. Now, there is some other fellow by the name of Andy; a one-armed fellow. I gave him some bonds of the United Kingdom.

Q. How many did you give him?

A. I can't tell.

Q. How many did you give to Wolf?

A. 3.

Q. Where did the other 15 go to?

A. I don't know anything about that. I know of 3 others that was given to Harry Wolf by another boy, that I had nothing to do with.

411 Q. 3 to Wolf, by Andy?

A. Yes, Andy; a one-armed fellow from Wall Street; they all know him down there. His name is Andy.

Q. That is 6. Do you know anything about the rest?

A. No sir; I don't know anything about the rest.

Q. No. 154?

A. U. S. Ant. I don't know anything about that. \$10,000 worth of bonds.

Q. No. 155?

A. \$2,000 U. S. Rubber. 1,000 I know of, given to Harry Wolf.

Q. What about the rest?

A. I don't know about the other \$1,000.

Q. No. 156?

A. Warner County Kentucky coupons. I don't know anything about that. It says here: "Coupons." The date does not say.

Q. No. 157?

A. Wayne County bonds. I don't know anything about that.

Q. No. 158?

A. Wilson & Co.; 1928—no; there is two different maturity dates. One Wilson & Co. bond was given to Nick Cohen. I don't know which maturity date: 1928 or 1929. That was a 1,000 dollar bond; that was given to Nick Cohen and Arnstein. You have not traced that? That was given to Nick Cohen and Arnstein.

Q. One?

A. Yes; and one was given to Harry Wolf.

412 Q. Is that all?

A. That is all I know of. There are 7 others, I don't know anything about. Another bond that was given to Harry Wolf by that fellow Andy, of Wilson & Co. He gave him some of them Wilson bonds. I don't what there were. There may have been 7 of them for all I know.

Q. What kind of a fellow is Andy?

A. He is a one-armed fellow; about five foot eight.

Q. He is not the fellow that worked for Stoneham, is he?

A. He is an extra runner down there. And another fellow by the name of Buck who was in that gang; Buck Connell; C-o-n-n-e-l-l. But I never had nothing to do with those fellows. Liberty Bonds I don't know anything about; no Liberty Bonds. Do you want me to read off the numbers?

Q. No.

A. I know nothing at all about Liberty Bonds. I never handled any Liberty Bonds.

Q. Now skip all the Liberty Bonds.

A. That finishes this list that I have here.

Q. Do you know of any other securities that you handled?

A. There is Fisk Rubber, 100 share- temporary certificate; Fisk Rubber Tire Co. That may have been put out again. That was a temporary certificate; that was destroyed.

413 Q. Who destroyed it; you?

A. Yes sir.

Q. Where did that come from?

A. I don't know. 100 shares of Keystone Tire & Rubber, temporary certificate, was destroyed. And there is 200 shares of some

kind of temporary certificate that I don't know anything about. 200
shares temporary certificate destroyed.

Q. You destroyed all those?

A. Yes sir.

Q. Do you know where the Keystone came from?

A. No.

Q. Do you know where the 200 shares came from?

A. No sir. There was some Central Leather bond—these other
fellows I never did anything with.

Q. What else do you know of?

A. There are some other fellows' names on here that I never had
anything to do with. But they disposed of bonds through Harry
Wolf. I never had any connection with them at all. But I think
they were disposing of them. I got the names of those fellows.

Q. What do you know about Buck Connell?

A. He is from Brooklyn. He generally hangs around New Street,
right by the Stock Exchange. And a fellow by the name of McCollough.

Q. Give us all about Buck Connell first. You say he hangs
around New Street?

A. He used to hang around there; in back of the Stock Exchange.

He deals in—he used to get those boys to get Revenue Tax
414 Stamps, and he used to get about 20% for them. And he got
a lot of bonds off those fellows. And I would not be surprised
if Harry Wolf—the way I understand, he claims that he gave some
of those bonds too, to this here fellow Buck Connell; and another
fellow by the name of McCollough, who does the same thing. \$1,000
of United States Rubber bond; I don't know whether that is down
there or not; that was given to Harry Wolf; you may have this down
twice now; I don't know. Baltimore & Ohio bond \$1,000, given to
Harry Wolf. Chicago, Milwaukee & St. Paul bond, \$1,000; given
to Harry Wolf. Have you got \$5,000 worth of bonds, Interborough-
Metropolitan 5's? They went to Harry Wolf. And there was a
couple of Missouri Pacific bonds, 2 or 3, I don't know which, given
to Harry Wolf; 2 or 3 1,000 dollar bonds. Bethlehem Steel bond,
\$1,000. They are all given to Harry Wolf, the bonds. He has got
a 100 dollar bond of Sherwin & Williams, Harry Wolf. There is an
American Tel. & Tel. bond; I don't know what is the amount of it;
I think it is on the other list; you may have that down twice now.
I think it was \$500; I am not sure. There is some Illinois Central;
I guess you have got that down; bonds. Utah Power & Light. I
don't know anything about that, except it is Utah Power &
415 Light.

Q. Who has that; Wolf?

A. Wolf has got that.

Q. How much do you think that is?

A. I don't know how many there are.

Q. Where did you get that?

A. I can remember one Missouri Pacific that was given to me by
my brother, and I gave it to Rudie Bunero.

Q. You testified here to \$1,000 of the U. S. Rubber which you gave to Wolf?

A. Yes sir.

Q. Where did that come from?

A. From Gus. Zeitman, or my brother.

Q. And the \$1,000 of the B. & O., do you remember?

A. (No answer.)

Q. And \$1,000 of Chicago, Milwaukee & St. Paul?

A. I think that was given to me by my brother; I am not sure.

Q. \$5,000 of Interborough-Metropolitan?

A. My brother.

Q. 2 or \$3,000 of Missouri Pacific?

A. One of those bonds was given to me by my brother; I know one was given to me by my brother; and I gave it to Herbert Bunero or Rudolph Bunero, and he gave it to Harry Wolf.

Q. And the \$1,000 Bethlehem Steel?

A. That was given to Wolf I think.

416 Q. And the Sherwin-Williams?

A. 100-dollar bond.

Q. Where did you get that?

A. (No answer.)

Q. And the A. T. & T., 500 dollar bond was that?

A. I don't know; I think that was a 500 dollar bond. That is what I stated before.

Q. And the Utah?

A. I don't know how many of them there were, and I don't know who gave them to me.

Q. Now take your time and go through it from A to Z.

A. I don't want to give any names, if I am not sure who gave them to me, because I will be incriminating somebody else.

Q. Well, give us all that you can. Give us the names of the bonds.

A. Chicago Great Northern, 1,000 dollar bond.

Q. Who was that given to?

A. Given to Harry Wolf.

Q. You don't know where it came from?

A. No sir. There was some Telephone; I don't know which Telephone it was—not the American Tel. & Tel.; some other city bond, that I don't remember the name of it.

Q. Bell Telephone?

A. No; I don't think it was the Bell Telephone. It was some name of some city.

Q. Keystone?

A. No.

Q. How much did it amount to?

A. A 1,000 dollar bond.

417 Q. That went to Wolf?

A. It went to Wolf.

Q. Did Wolf turn back anything to you at all?

A. Not a thing.

Q. Go right ahead.

A. Rudie Bunero went down there with me one time, after I told him about this, giving Harry Wolf the bonds, and he tried to get them off him; but he didn't.

Q. Go ahead; we will come to this in a minute. Tell us first about all the bonds that can remember. Now, have you told us all that you can remember? Let us go back to the beginning; perhaps we will get it in a little different way. Let me begin at the beginning: First, tell me how old are you?

A. 23.

Q. Where were you first employed?

A. Josephthal & Louchheim Co.

Q. How long were you there?

A. A couple of years I guess; I don't know how long.

Q. Well, did you ever do anything wrong there?

A. No sir.

Q. Where did you go from there?

A. I went to work for Mr. Gilbert J. Postley.

Q. How long did you stay there?

A. About a year.

418 Q. Did you do anything wrong there?

A. No sir.

Q. Where did you go from there?

A. I could name a lot of places where I worked, from time to time.

Q. Yes; in regular order.

A. Regular order I could not tell you.

Q. Well, Josephthal, Louchheim & Co.; Gilbert J. Postley. How old where you when you started?

A. To work?

Q. Yes.

A. I was about 14.

Q. When you left Postley, cannot you remember where you went?

A. No sir.

Q. Name all the places you have worked, then?

A. Armour & Co.

Q. How long?

A. I only worked there for a season; I had a season job there; decorator.

Q. Go ahead.

A. I was working for my father quite a long while, in the auction business; different concerns.

Q. What is his name?

A. My father?

Q. Yes.

A. Samuel Gluck.

Q. Where else did you work?

A. A firm down here on 24th Street; I forget the name of it. I worked for them some years ago. I can't tell all the names. I

419 worked for Josephthal twice; I stopped working there and went back again. I worked for Mr. Postley two different times. He was in two different businesses.

Q. You gave us Josephthal; and Postley; and Armour. You must remember the other places where you worked?

A. Well, I worked for Postley about a year; and then I went down—after I came back from France, I went over and worked for him again. I was in the Army for three years; I enlisted in the National Guard in November 1916.

Q. Were you away from 1916 to 1919?

A. No; I was away from I think from July 1917 I was away until March 1919.

Q. And then you did not start to do anything wrong until you came back from France?

A. Well, I came back in March 1919.

Q. Then did you start to do anything wrong?

A. I didn't start to do anything wrong either.

Q. When did you start to do something wrong?

A. In May.

Q. And why did you do it? I want to give you a chance now to explain.

A. My brother had some—he claims he met a fellow on Broad Street, see, that asked him to dispose of bonds—asked him to get some bonds, see?

Q. Where was your brother working then?

420 A. He was working for Bamberger, Loeb & Co. at the time.

Q. This was last May; just a year ago?

A. Yes sir.

Q. Is that right?

A. Yes sir.

Q. You were then 22?

A. 22.

Q. And your brother was how old?

A. 19 I guess.

Q. Now, you say someone approached your brother and asked him to dispose of stolen bonds?

A. No.

Q. What is the story?

A. He asked him if he worked down in the Street.

Q. What is the boy's name that approached your brother?

A. It was not a boy; it was a man.

Q. What is his name?

A. I don't know him; I never met him. This is my brother's story.

Q. Didn't he ever tell you his name?

A. He don't know; it was an unknown man.

Q. An unknown man approached him?

A. Yes; and took him to a restaurant and gave him some food.

Q. What restaurant?

A. On Broad street somewhere.

Q. You don't know the name?

A. No. He knows the name of it I guess. And he spoke to him and he said "You work down in Wall Street?" He said "Yes." He said "I can make a lot of money for you." He told him he would make lots of money. He said "You handle a lot of 421 stocks and bonds and things like that." He said "If you could get a lot of them, bonds or stocks, you could make a lot of money." Or something like that. I don't know just what he said. That is the story he gave me. And my brother got hold of a Missouri Pacific bond—some boy asked him to deliver it, so he did not deliver it; and that was the first bond.

Q. This was last May?

A. Last May—I think it was April or May; I don't know for sure.

Q. Where did that bond come from?

A. I don't know. I ain't so sure now if that was the first bond. And he asked him to meet him at a certain place on the next day, see?

Q. Where?

A. Oh, I think it was 25 Broad Street. And to be standing there inside of the building.

Q. This is all what your brother told you?

A. This is all what my brother told me.

Q. When did your brother tell you this?

A. He told me I think a couple of days later; that he met somebody; and he never showed up, see? He had the same bond; he didn't know what to do; he was afraid to deliver it back again, because it was missing a couple of days now. He was afraid if he came back with it he would get in trouble. He asked me 422 what to do with it. I actually gave him the devil for doing it. That was my words, exactly; because I was working down in Wall Street at the time for Gilbert J. Postley; he was at 7 Wall Street at the time. I told him he should not have done it. I didn't think they were any good anyway. I didn't know if they could be disposed of. I didn't know anything about it at the time; nothing about anything. I said "Give me them." I took them off his hands; I was afraid; because if he was to carry them I was afraid he would get arrested with it, see? I had them for a couple of days myself; I didn't know what to do with them. And I approached Rudie Bunero, and I told him that I had a bond that I found, see? And if he could dispose of it, all right. He said "Did you really find the bond?" I said "Yes." And he took the bond up to Harry Wolf.

Q. What bond was that?

A. I can't remember.

Q. You can't remember the first one?

A. No.

Q. Where was Rudolph Bunero working then?

A. That I can't tell you.

Q. You don't know where he was working?

A. No sir. I know him from up around my home; he lives around my way. That is where I know him. I know him for five years.

423 Q. How old is he?

A. He is married; he is about 23 I guess; or 22 years old.

Q. He took the bond to Harry Wolf?

A. Yes sir.

Q. Where was Harry Wolf working?

A. He was in his father's store; Prospect Avenue & Webster Avenue.

Q. Did you go along with him?

A. I went along with him. I did not speak to Harry Wolf at that time.

Q. You went along with Bunero?

A. Yes sir.

Q. And watched him talking to Wolf?

A. Yes sir.

Q. What was the result of that?

A. Well, he wanted to have the bond for a day; to leave it there for a day. It was no good to me; I told him to leave it; I didn't want—oh yes; at first he made up that he would give 50 per cent for the bond. Well, I know the next day he came up and he gave him \$300, to Rudie Bunero.

Q. Did you say Wolf gave Bunero \$300?

A. Yes sir.

Q. And Bunero gave you how much?

A. 200; and I gave 100 to my brother.

Q. That was the initial transaction?

A. Yes sir.

Q. What was the next step? You had some more bonds left, didn't you?

A. Well, I didn't get them yet. I started to tell you where I got them.

Q. Yes?

424 A. Then my brother seen he got the money; he went down there of his own accord and he got some more bonds; some one of the boys asked him to deliver it, and he did not deliver it. All of them actually asked him to deliver them; let me get this straight. They had some stocks or bonds in their hands, you understand, and they said "Will you take these up to so and so, if you are going up there?" And my brother would not refuse, see? And he got some more bonds. And gradually, I gave those bonds to Harry Wolf; but all the time, I never received a penny for them, outside of that \$100.

Q. Do you say that all of those stocks and bonds that your brother got, he got from other messengers, for delivery?

A. For delivery, yes sir.

Q. And the other messengers were not in on the stealings?

A. No sir.

Q. In no case?

A. No case that I know of, no sir.

Q. This was going on all through April and May last year?

A. All through all the time up till the Sullivan case came up.

Q. Then Wolf was in with you from the very beginning?

A. Yes sir.

425 Q. And Bunero was in from the very beginning?

A. Well, you see Bunero thought at that time—I told him it was a found bond, you understand. But about a week later I went over to Bunero and I told him that it was a stolen bond; it was supposed to be delivered; it come to me from—a fellow gave it to my brother to deliver and my brother did not deliver it. I told him; and I gave the other bonds to Harry Wolf; I knew Harry Wolf then, and I gave him bonds. I went to Harry Wolf without Bunero after that.

Q. After the first deal?

A. After the first deal, I did it myself; because I was up there the first day, and I knew where his place was, where his store was. And I told Bunero that he had a lot of bonds that he did not give me any money for or nothing; and he claimed that a fellow tried to dispose of them, and he got caught disposing of them, see?

Q. I do not get that clear.

A. Harry Wolf told me, see, that he gave them to another party to dispose of, a man to dispose of, and he got caught trying to dispose of them.

Q. Who is that man?

A. I don't know. That is his story. Of course, that is not
426 true; I know that for a fact.

Q. Can you enumerate all the shares of stock and all the bonds which you or Bunero gave to Harry Wolf?

A. One bond that Bunero gave to Wolf.

Q. No; you gave a whole lot more to Wolf.

A. Oh yes; I gave about between 15 and \$20,000. There was some returned. About \$15,000.

Q. Can you enumerate what they were, so that we can get each man separately? Try to write out here, if you will, all that you gave to Harry Wolf, so that we will get each name cleared up.

A. 100 shares of Bethlehem Steel B stock. One Bethlehem Steel bond. \$5,000 of bonds of Interborough-Metropolitan. \$5,000 Pennsylvania bonds. 2 Wilson & Co. bonds. One bond of Chicago, Milwaukee & St. Paul. One U. S. Rubber bond. Utah Power & Light, one or 2; I don't remember.

Q. Those are all bonds now?

A. All bonds. One Baltimore & Ohio bond.

Q. Do you know what series?

A. No sir. 3 United Kingdom bonds; that is the series of 1937 I know. One or 2 Illinois Central bonds. A 100 dollar bond of Sherwin & Williams. 500 dollar City Service bond. One Third Avenue bond. One New Jersey Power & Light. 500 dollar
427 bond American Tel. & Tel. One Great Northern Pacific, or Great Northern Chicago Central; I don't know which; 1,000 bond. Maybe one or two, I don't know how many, Central

Leather bonds. Lake Shore 1,000 dollar bond. That is all I can think of.

Q. Now have you told us of your entire relations with Harry Wolf; or is there something more you want to tell us?

A. No; nothing that I know of.

Q. How much money did you get from Wolf?

A. \$100.

Q. For all of this?

A. Everything.

Q. And over what period of time did this take place, with Wolf?

A. Well, just before I met Nick Cohen; just about a week before.

Q. So that I get this right, I want to have it right on the record for your sake.

A. Yes sir.

Q. The first transaction was with Rudie Bunero?

A. Yes sir.

Q. And he took the matter up with Harry Wolf?

A. Yes sir.

Q. And after that you did business direct with Wolf?

A. Yes sir.

Q. You gave Wolf all these shares of stock and all these bonds about which you have testified?

428 A. Yes—it was only 100 shares of stock that I gave him.

Q. Well, all these shares of stock and all the bonds you gave directly to Wolf?

A. Yes sir.

Q. And you got \$100 for all of them?

A. Yes sir.

Q. Do you know what he did with them?

A. Well, the way I understand—I don't know how true it is—he said he gave some of those bonds to Buck Connell.

Q. Who is he? Do you know Buck Connell?

A. I met him; he used to be down in Wall Street.

Q. Do you know where he is now?

A. He was down there a few days ago, if I am not mistaken.

Q. Do you know where he lives?

A. In Brooklyn.

Q. Where, do you know?

A. No.

Q. Do you know where he works in New York?

A. No. I know he hangs out there. He gets a lot of those Revenue Tax Stamps, you know, from those boys that steal them from the offices.

Q. Well, is he well known? Could he be picked out quickly?

A. Yes, easily. He generally stays around in back of the Stock Exchange in New Street. And there is another fellow with him by the name of McCollough.

Q. Was McCollough in on this too?

429 A. As far as I know—I have nothing to do with them; this is Harry Wolf's story to me; and to Rudie Bunero also he said that.

Q. Now, up to this time the persons involved so far are you and your brother; is that right?

A. Yes sir.

Q. And Rudie Bunero, and Harry Wolf, and Buck Connell?

A. I never did anything with him, Buck Connell.

Q. Well, so far as you know?

A. Yes.

Q. Then you come down to the time when Nick Cohen comes in; is that right?

A. No, not yet.

Q. Well, what is next?

A. This fellow Byrne.

Q. Now, how did you meet Byrne?

A. Through an introduction through a fellow by the name of—I don't know his name; they know it over at the District Attorney's Office there; I don't know. Chubby they call him. They have got a record of that; he has been up there, Chubby.

Q. How did you meet him?

A. I met him down in Wall Street.

Q. Do you know where he works?

A. No. I know where he did work at one time: Bamberger, Loeb. He was an accountant and bookkeeper up there.

Q. How much did you give him?

A. I didn't give him nothing.

Q. How is he involved here?

430 A. Just by introduction to Byrne.

Q. Byrne was. How much did you give Byrne?

A. 100 shares of American Tobacco.

Q. Is that all?

A. Yes sir.

Q. How much did you get from that?

A. I didn't get nothing.

Q. Why did you give it to him?

A. That was taken up; a fellow got arrested with it.

Q. What is that?

A. Kitching got arrested with that.

Q. Why did you give 100 shares of American Tobacco to Byrne?

A. He was going to dispose of it.

Q. And he did not?

A. Well, he gave it to another party, who got arrested, that Mayer and Brown got hold of.

Q. Who was that?

A. I think that is Kitchings or Godfrey.

Q. Can you fix the time when you got through with Wolf?

A. About when it was?

Q. Was it in the Summer time?

A. I met Nick Cohen in October. It was in the Summer; about July I guess; I am not sure.

Q. You took it up with Byrne; and the next one was Nick Cohen?

A. No, not yet.

431 Q. Well, who was next after Byrne?

A. Do you want the people that introduced me?

Q. Surely.

A. They were not in it though.

Q. That does not make any difference.

A. There was a party with Byrne by the name of Perrin, introduced me to Bill Stahl.

Q. Of Hoboken?

A. Yes sir.

Q. You did not give anything to Perrin?

A. No sir; or Stahl.

Q. Or Stahl?

A. No.

Q. Through Stahl you met Nick Cohen?

A. Yes sir.

Q. Where is Perrin now, do you know?

A. No.

Q. Is he arrested?

A. No.

Q. Was Byrne arrested?

A. He was not arrested. Byrne was up in the District Attorney's Office.

Q. Was he arrested?

A. I don't think he was arrested, as far as I know of.

Q. Was Stahl arrested?

A. No.

Q. Where does Stahl live?

A. He lives in Hoboken.

Q. You don't know the address?

A. No sir. Plainfield Avenue; something like that. They have got it up at the Office.

Q. Stahl has not been arrested either?

A. No.

432 Q. Through Stahl you met Nick Cohen?

A. Yes sir.

Q. How did you come to all these introductions? How did you become acquainted with Byrne?

A. Here is how it was: Through Chubby—you have got that down there—Chubby, from Bamberger, Loeb.

Q. Chubby introduced you to Byrne?

A. Yes sir.

Q. How did you know Chubby?

A. I met him down on Wall Street.

Q. Well, is Chubby all right, or is he crooked?

A. Well, I don't know; I will not say.

Q. Well, tell us everything now.

A. I guess he is crooked, so far as I have known down there. I have known—the way I have heard about him, he has been crooked. I don't know what he done; but so far as I know, he has been crooked. But he has not done anything crooked in this case.

Q. Is he still there with Bamberger, Loeb?

A. No. I went to him and told him about Harry Wolf having those bonds and not giving me anything out of them, or anything.

Q. What did he say?

A. Oh, he said "Why don't you go up there and make him do it?" Or something like that. He said "You are foolish. I can get a fellow here that can dispose of them, and give you a big price, and everything." I said "I haven't got anything, I am telling you." And he started to talk to me in a way, conversation; and he introduced me to Byrne. That was when I gave him the 100 shares of American Tobacco.

Q. He told you Byrne would be a regular fellow and handle the stock for you?

A. Yes sir.

Q. Then Chubby knew you were dealing in stolen securities?

A. Yes sir.

Q. Because you told him?

A. Yes sir.

Q. And he introduced you to Byrne so that you would have an outlet?

A. Yes sir.

Q. So that you would not have to go back to Wolf; is that right?

A. Yes sir.

Q. Then you gave 100 shares of stock to Byrne, and he laid down on you too; is that right?

A. Yes sir.

Q. Then you met Perrin in Byrne's office; and you thought you could do business with Perrin?

A. No. He called me on the side and talked to me.

Q. Perrin told you that Byrne was doing you; is that right?

A. Not exactly. But he told me that he could get me a man that could dispose of the stuff, you know.

Q. Well then, Perrin knew you were dealing in stolen securities?

A. Yes; Perrin knew it.

Q. Perrin introduced you to Stahl?

A. Yes.

Q. Then you told Stahl that you were dealing with stolen securities; is that right?

A. Yes sir.

Q. And he introduced you to Nick Cohen; is that the story?

A. Yes sir.

Q. That is all, up to the time Nick Cohen came on the scene?

A. Yes. So he told me he knew a lot of fellows that gambled around Hoboken, see?

Q. Who did he mention?

A. He didn't mention any names at that time. He said—he called me up at my house one day, and he told me to come down there. And I met Nick Cohen; he gave me an introduction to Nick Cohen.

Q. Where?

A. In Hoboken.

Q. Where in Hoboken?

A. River Street I think it was.

Q. In a saloon?

A. No; in the street.

Q. In the street?

A. Yes sir.

Q. How old a man in Stahl?

A. He is a pretty old fellow; he is about 45 or 50 I should judge.

Q. Were you ever to his home?

A. No sir.

Q. Do you know what business is he in?

A. He was working for the Government there; on the Government pier.

435 Q. Doing what?

A. I think he was a time keeper.

Q. He introduced you to Nick Cohen?

A. Yes sir.

Q. Now have you told us all the parties in this right down to Nick Cohen?

A. Yes sir.

Q. You have not left out anyone?

A. No sir.

Q. How did Stahl introduce you to Nick Cohen?

A. As Mack; only Mack; that is all I know him by.

Q. He said "This is Mack"?

A. Yes. That is the only name I ever knew him by; until I found out afterwards.

Q. Did Stahl and you and Cohen talk together about stolen bonds or securities?

A. Yes,—well, Stahl had to go back to work; but he knew what we were talking about. He had to go back to work; he was working for the Government.

Q. What did Cohen say to you?

A. Cohen took me back to New York, and into a restaurant.

Q. Without any conversation about bonds?

A. Yes; sure.

Q. I mean what did he say to you in Hoboken about bonds, before you went to that restaurant?

A. He said "I understand bonds and stocks are being stolen. Mr. Stahl tells me. And I can dispose of them; I know people—

436 nobody else can dispose of stocks." He said "I have got the only man that can dispose of stocks," he said.

Q. Did he tell you who he knew?

A. Not at that time.

Q. He did not mention Nick Arnold's name?

A. No; not at that time.

Q. Well, stick to that one time.

A. That is what I am trying to do.

Q. He brought you to a restaurant in New York?

A. Yes sir.

Q. Do you know what restaurant?

A. No; I can't remember.

Q. Do you remember anything more that took place; any conversation?

A. He told me to get some bonds; and I was to meet him up at 86th Street & Broadway—no; 81st Street & Columbus Avenue; the Endicott Hotel.

Q. You met him in the Endicott Hotel?

A. Outside of the hotel, yes.

Q. When was that; what month?

A. In September I guess.

Q. Then, to come right down to it: September of last year, that is when you met Nick Cohen, and that is the beginning of the big end of this business; is that right?

437 A. Yes sir.

Q. What took place when you met him at the Hotel Endicott last September?

A. He told me that he could—if I could get bonds for him, he could get me—he would promise me about 40 per cent of the bonds; 40 per cent for stocks. He told me that would be my share out of it. He told me to get some bonds and meet him there. So I met him there one day, and I had some bonds; I had about seven or \$8,000 worth of bonds. He took me up to—oh, first he took me up to—I had some stocks too, at the time—

Q. (Interrupting.) Let us get this right: Now, tell us exactly what shares of stock and what bonds you gave to Nick Cohen at the first meeting. We want to get this right now.

A. I can't give you all of them; I will tell you some of them: 500 Atlantic Gulf & West Indies. 300 St. Louis & San Francisco stock. And about seven or \$8,000 worth of bonds; I can't remember.

Q. You cannot remember the names of the bonds?

A. No sir.

Q. All right; what took place?

A. He took me up to the Post Graduate Hospital.

Q. Who did you see there?

438 A. He waited downstairs—he went over to the information desk and asked for a certain man.

Q. He did?

A. Yes.

Q. You don't know who he asked for?

A. I can't just think of the name; on the second floor. I know the man said it was a private room.

Q. That is 18th Street & Second Avenue?

A. I think it is 23rd or 18th Street; something like that.

Q. Go on.

A. And he went up there; and he told me he had to leave them there a day, see; the bonds and stocks.

Q. Did he leave them all there?

A. Yes sir. The next day I met him at 81st Street & Columbus Avenue again, and he took me down there again.

Q. To the Post Graduate Hospital?

A. Yes sir. And he got rid of the bonds, but he didn't get rid of any of the stocks.

Q. Did he give you your 40 per cent?

A. No. He gave me about six or \$700; I don't know exactly what it was—\$700 I think. When he came down before that, he told me he could not give me what he promised, see? And I didn't have any money at the time, and I was pressed, see? I didn't have no money at all. So he went up and he told me he would give
439 me several hundred dollars—I don't know whether 700 or 600; I can't remember exactly. And he gave me the money; and he gave me back the stocks. But I went downtown with him later on, to Pollak & Co.

Q. Where are they?

A. 70 Broadway I think; I am not sure.

Q. You went with him?

A. Yes.

Q. That is where McKettrick is?

A. Yes sir.

Q. P-o-l-l-a-k is it?

A. Harry Pollak & Co. They have got a big office there; they had quite a few stenographers. He went into the private office there, and the way I understand—the way they talked, they knew each other pretty well, see? I met McKettrick after that up in the District Attorney's Office, and he didn't know anything about Nick Cohen; the first time he met him. But being that he knew his name—he called him Mack, or Nick, whatever it was—I thought it was Mack then; later I found that it was Nick, he called him. I know he called him by his name. And he said what good times they had; they were drunk, and all that, you know. And he told him to go over to John Hogan & Co. the same day; John Hogan, 52 Broadway; chief investigator of the financial district. I don't know;
440 John Hogan wanted to take the stocks and go out of town, and dispose of them; but he didn't want Nick Cohen to go along with him out of town—I didn't know his name was Nick Cohen at that time. And he refused. He had an appointment for 3 o'clock up at the Wellington Hotel—Nick Cohen I am telling you; all right; Mack I mean; at that time I thought it was Mack. He went up to the Wellington Hotel and met Nick Arnstein at that hotel.

Q. You were along?

A. Yes, I was along.

Q. That was the first time you ever met Nick Arnstein?

A. I didn't speak to him there.

Q. Under what name was he introduced to you?

A. I did not speak to him there. He spoke to him right by the door. I was inside in the lobby. And he told me that he has got a fellow, and he has got good connections here; he didn't tell me his name at all at the time; I don't think I ever asked him his name at the time. He said he would call me up in a couple of days, Nick Cohen. He called me up, and one day I met him, Nick Cohen, and Nick Arnstein, down at Washers Cafe, 86th Street & Broadway,

Q. That was the next meeting?

A. That was the next meeting. They were going to make a trip out of town; they told me they were going to Baltimore, see? They told me they would take stocks with them—oh, by the way, yes. At that time he was supposed—what he was supposed to be giving me was only 8 per cent for the stocks. That is what he offered for the stocks. So we were in Washers Cafe, and Arnstein was talking to Mr. Washer himself, and I was at the other end of the cafe with Nick Cohen. About 11 o'clock Nick Arnstein—I was there with Nick Cohen for about an hour; I didn't speak to Nick Arnstein at all yet. He called him over and he said "Come on"—oh yes; I had stocks with me at the time in a grip. I had stocks in a grip, and he told me to come outside; they were going over to call a cab. And we went down to the Pennsylvania Station; it was about 11:30 we started to go down.

Q. That was in October?

A. October 13th; 11:30. We took a cab and we went down to the Pennsylvania Station. He went and got the tickets, Nick Arnstein paid for the tickets; and he gave a five dollar bill tip to the ticket agent. And he bought the tickets. While I was about to get on the train; just had about five minutes to go; it was 12:10 at that time, there was a man came along and he talked to both of them. What he said, I don't know. Nick Cohen told me to walk ahead a little. A man came over, which I know now to be David W. Sullivan. He was dressed at that time in a loose overcoat, and a brown hat; velour hat. He did not go on the train with them; Nick Arnstein bought the tickets for a drawing room for the three of us. I didn't see him get on the train, but he must have got on the same train; because when we arrived—I got up at half past seven o'clock—oh, you want to know what took place in the stateroom, don't you?

Q. Yes.

A. He asked to look at the stocks, Nick Cohen.

Q. Well, before you come to that, you have not told us what you had in the grip. Now tell us what stocks. All you have told us so far is 500 shares of Atlantic Gulf.

A. I will tell you what happened when we got into the stateroom. We got in the stateroom, and he locked the door. The porter—here is the funny part of it all—I went down to have the porter identify me. He remembers me—the porter on the train remembers me refusing to give him the grip. He remembers Nick Arnstein and Nick Cohen at the time, the porter on the train. I went down from the District Attorney's Office for him to identify me. The porter identified me. I showed him a picture of Nick Arnstein, and he said he remembered. I said "You remember my carrying the grip?" "Yes," he said he remembers me not letting him carry the grip, you know, into the train. The porter remembers that; he testified before the Grand Jury.

Q. Now, you were telling us what was in the grip.

A. Yes. We went on the train, and he locked the door.

Q. Who is "he" now?

A. Nick Arnstein locked the door.

Q. Then you did not know him under any name at that time, did you?

A. That night, in the cab, I was introduced to him as George.

Q. Coming down from Washers Cafe?

A. Coming down from Washers Cafe I was introduced to him under the name of George. The way he was talking, English like. He started kidding. He was talking about different things. He was an English talking chap. When we locked the door in the train, Nick Cohen asked to look at the stocks in the grip. I showed him the stocks, 500 shares of Atlantic Gulf & West Indies.

Q. Was that the same that you told us about before?

A. Yes. They were not disposed of yet; they were returned
444 from the hospital, not disposed of. 500 shares of Atlantic Gulf & West Indies. 300 shares of St. Louis & San Francisco. And there were some others, I don't remember. You can look at the list and you can find out;; the first Washington stock. I can't tell.

Q. Well, we want to get that right. Look at Sullivan's testimony.

A. (After referring to papers.) And 100 shares of Retail stores, temporary certificate. That is all.

Q. That is 900 shares of stock; is that right?

A. Yes; 900 shares.

Q. And the bonds were disposed of by the man in the hospital?

A. Yes sir.

Q. Now, we have got our record straight so far?

A. Yes sir. Nick Cohen asked to look at the stocks. He looked at them, and he passed them over to Nick Arnstein;; and Nick Arnstein looked at them, and he put them in the grip—he handed them back to Nick Cohen, and he put them in the grip. We went to bed. During the conversation—they had some whiskey; they were drinking themselves; and they were talking about something—I can't remember. And we arrived seven o'clock—I got up seven o'clock in the morning, in Washington, and I was dressed before they were.

And they told me to go out and have something to eat and
445 meet them at 9:30 in the Willard Hotel lobby. At 9:30 I met both of them at the Willard Hotel. Nick Cohen went away, and Nick Arnstein hired a cab, or a regular car, private car, and we went around for about an hour, looking Washington over, while Nick Cohen was away on business. He did not have the stocks with him;; they were checked at the hotel. And when we came back, Nick Cohen asked us for the stocks. I went and took the stocks, and we went down to the lavatory, Nick Cohen and Nick Arnstein, and I handed him the stocks there.

Q. Handed them to both of them?

A. I handed them to Nick Cohen in Arnstein's presence. And Nick Cohen walked ahead. He said he was going up—he told me to stay with Nick Arnstein. I went with Nick Arnstein; we followed Nick Cohen. He went up to—I don't know what street it was, but it was Sullivan & Company's office in I remember the O

Dutch Market; in a building called the Old Dutch Market. We waited across the street, Arnstein and I. We waited there a little while, and then we went back. And later on, around I imagine it was about two o'clock, Nick Cohen came back. He disposed of the stocks he told me, but he could not get all the money, because it takes time. He said they could not dispose of it all at once, you know; they have to borrow on it. At that time he gave me \$1,000, and he took back 500 for himself. He said he needed it; he gave me the rest, Cohen. We went in a cab, and went right down to the Station. He told me he would meet me in a day or two in Hoboken; he would call me up at the house—he had my 'phone number. He called me up as Mack; that is all.

Q. He had not been to your home up to that time?

A. No sir. And I met him and went back on the Congressional Express from Washington; and I went back to New York. A day or two later I met him over in Hoboken.

Q. Where in Hoboken?

A. At the Lackawanna Station. I don't know the date; a day or two later. And he gave me \$2,500. I deposited that money in the Hoboken Bank there, I forget the name of it; on River Street; Steneck Trust—or rather, he took me to the receiving teller and introduced me. He said "You don't have to give any address; just give the name."

Q. S-t-e-n-i-n-g?

A. S-t-e-n-e-c-k Trust. He introduced me to the Receiving teller, or the paying teller—the paying teller.

Q. Do you know his name?

A. The paying teller was up before the Grand Jury. And I understand he opened an account later himself. I was not there when he opened it. I did not know his name at the time either. Later on he called me up—I got some more stocks; and he called me up and told me to—I didn't go along with him this time. He told me to take the train at about midnight for Boston, and stop at the Touraine Hotel. I stopped there over night at the Touraine.

Q. You went there alone?

A. Yes sir.

Q. And you met him there?

A. Later on he called me up—he called me up from outside; he never had—he would never talk to me either in the hotel or any place or any house. I would have to go out and use a private 'phone. He would give me a number, and I would call him up on a private telephone, in a public booth.

Q. You took some stocks with you to Boston?

A. Yes sir.

Q. What did you take to Boston?

A. 200 shares of Ohio Gas. 100 shares of Studebaker. 100 shares of Texas Company. 100 shares of Republic Iron & Steel. And 100 shares of Worthington Pump. I don't think this is right. (Referring to paper.) This lot of stocks here I didn't take on that trip. That have been for the first trip.

448 Q. I want to know what the facts are as you know them. I would rather take your recollection.

A. "That is what we received, in Boston, October 25th, from Cohen and Arnstein." I would have the stocks October 14th; and he would have held them over to October 25th in Boston.

Q. What else? You got down to 100 Worthington Pump.

A. And 100 shares of U. S. Food.

Q. Is that all for Boston?

A. And 100 shares of Pond Creek.

Q. That is all for Boston?

A. And 100 shares of American Smelters common. 100 shares of American Smelters preferred. I didn't make all that in one trip. 100 shares of Endicott-Johnson common. 50 shares of Reynolds Tobacco. 300 shares of Pennsylvania. That is all.

Q. Were you introduced to Sullivan when you went on that Worthington trip?

A. No sir. I met Sullivan in front of the Willard Hotel around 10 o'clock.

Q. Were you introduced to him?

A. No sir. I was on the other side. They told me to take a walk.

Q. You mean that is the second time you saw him?

A. That is the only two times I ever saw him.

Q. The only two times you ever saw him in your life?

A. Oh, I saw him up in Court.

449 Q. I mean outside of that?

A. Yes sir.

Q. Let us come to the Boston trip. Can you fix the time of the Boston trip; about when it was?

A. I got in about 10 or 12 o'clock.

Q. I mean what day of the month?

A. Well, October 14th I made the first trip. It would be within the next week or two.

Q. Some time toward the end of October?

A. The middle or end of October.

Q. Last year?

A. Yes sir. The end of October.

Q. You went to Boston, and you went to the Hotel Touraine?

A. Yes sir.

Q. Now, tell us everything that took place in Boston; what time you got there, and everything about it.

A. They called me up; I was to meet them.

Q. Who were "they"?

A. Nick Cohen called me up; I was supposed to meet them at another hotel; I can't think of the name of that hotel. It is a very nice hotel. They may have stopped there over night; I don't know.

Q. Well, that don't make any difference now. Go ahead.

A. I know it was a very nice hotel; but I don't remember the name.

Q. The Copley Plaza?

A. No sir.

Q. Westminster?

A. No sir. It is a first class house. It has got a cafe downstairs, I remember.

Q. Wasn't it Young's?

A. No sir. It is an up to date house; but I can't remember the name of it. They may have been registered over night.

Q. What time did you get there in Boston?

A. I slept over night there. I don't know what time it was.

Q. When did they get in?

A. I don't know when they came in. He called me up the next morning. He 'phoned me to call him up at another number.

Q. You did call him up?

A. I did call him up. He told me to meet him at that hotel.

Q. You went up to his room?

A. No.

Q. What did you do?

A. I was downstairs.

Q. Where did you go?

A. I went into the hotel. And we went down to the lavatory again, in this hotel, and I gave him those stocks there at that hotel.

Q. All these stocks that you have just told us about?

A. Yes sir.

Q. You handed them to Nick Cohen in the presence of Nick Arnstein?

A. Yes sir.

Q. Did Nick Arnstein touch them? Did he have his hands on them?

A. Not at that time.

Q. Well, later?

A. Not of those stocks, no sir.

Q. Well, what was done with those stocks then?

A. They were given to Nick Cohen, and he disposed of them.

Q. Where?

A. I don't know. I didn't go with him then.

Q. Did you see Sullivan then?

A. He went to dispose of them, and I walked around with Nick Arnstein. He showed me around Boston.

Q. Did you see Sullivan there?

A. No sir, I did not.

Q. Did you know that Sullivan was in Boston?

A. I didn't know he was in Boston at the time.

Q. What happened then? You came back to New York?

A. I came back to New York.

Q. How much money did you get in Boston?

A. I don't think I got any money there at all. They would not go through that day, see? They would meet me in a day or two and give me the money.

Q. Then what was the next move? You came back to New York?

A. Yes sir.

Q. Then you went out and got some more securities?

A. I got some more.

Q. Well now, you met Cohen or Arnstein in New York to get your divvy, didn't you?

A. Yes sir.

Q. Where did you meet him?

A. At the Lackawanna Station.

Q. At the Lackawanna Station again?

A. I did. I stopped at the Pennsylvania Hotel at the time.

Q. How long; a few days?

A. Oh, it was longer than that.

Q. Quite some time?

A. Well, it must have been about a week—it is up there on the hotel register. I registered at the Touraine Hotel in Boston under the name of Joseph Holt. That is the name they gave me.

Q. How do you spell that?

A. H-o-l-t. That is the name they told me to use.

Q. That is the name of Arnstein's gardener out in Huntington, isn't it?

A. I don't know. That is the name he gave me to use.

Q. What name did you use at the Pennsylvania Hotel?

A. I think that was Joseph Holt; or my right name; either of those two.

Q. Did they visit you at the Hotel Pennsylvania; Cohen or Arnstein?

A. No; never visisted me there.

Q. When did you see them to get your divvy, or your swag on the Boston deal?

453 A. I think it was at the Lackawanna Station.

Q. How many days after you came back from Boston?

A. I don't remember how many days.

Q. How much did you get?

A. That is hard to say. I got about \$20,000 all together, and I gave out 11,000 to the boys.

Q. On that trip?

A. No; all together.

Q. How much on that trip?

A. You see, I can't remember that.

Q. You don't remember how much you got out of that Boston trip?

A. I will try to. One time I got \$3,000. It may have been on that trip; I don't know.

Q. You got all together, from Cohen and Arnstein, \$20,000?

A. Yes sir.

Q. And you gave away 11?

A. 11.

Q. Who did you give the 11 to?

A. To Herbie Bunero.

Q. How much?

A. 1,500 I think it was.

Q. Yes; who else?

A. And I gave my brother \$5,000, all together, see? And I gave Gus. Zeitman—I don't know how much I gave him—about four or \$5,000; I don't know.

Q. Is that all?

A. And of course, to Bunero, \$100, what he took out of the
454 bond, for that first deal with Harry Wolf.

Q. We don't want to get away from this; let us stick to
this now. You came back and went to the Pennsylvania Hotel;
you got some money for the Boston trip; then you took some more
securities and went somewhere else?

A. Yes sir.

Q. When did you next make a trip, and where to?

A. I made a trip within a week or two afterwards, it was; it was
not any later than two weeks.

Q. Where was the next trip to?

A. It says here the next trip was to Philadelphia. (Referring to
testimony.) I think the next trip was to Baltimore. I went there
alone again, and he gave me the name of the hotel to go to—not to
stop over night; but just to meet him. The name of the hotel was
the Belvedere Hotel. They told me to go down to the switchboard
operator downstairs—there is a little room downstairs—and give
her half a dollar and tell her I have got an incoming call coming; and
fool around with her until I got a call from them. I waited down
there—there is two switchboard operators down there in a little room
downstairs. I waited, and I got a call from them to call up a
455 certain number in Baltimore. I called them up there. And
he told me to come out of the hotel at a certain time, on the
dot; it was in the morning; it was about I imagine, about 10 o'clock,
see? He told me to meet him just at that time in front of the hotel.
And Nick Arnstein was there at the time; I didn't see Nick Cohen.
He met me in front of the hotel and just walked around with me;
told me to come along with him. And we went to a hotel in Balti-
more; I forget the name of it; it is on a side street.

Q. Where the cars run?

A. No cars; a bunch of taxicabs in front of it.

Q. Is there a park in front of it?

A. What do you mean; a park, or a park for automobiles?

Q. A sort of park?

A. No. A parking place for automobiles.

Q. Was it the Emerson?

A. Is that on the corner or in the middle of the block?

Q. It is on the corner.

A. No.

Q. Was it the Commercial Travelers?

A. No.

Q. Is it the Canans; a new hotel?

A. I don't remember. They didn't stop over night there either;
because I didn't stop over night at that Belvedere Hotel. We
456 went down there in the toilet, and I gave them some more
stocks. We went down, with Nick Arnstein, and we met
Nick Cohen in the hotel, in the lobby. And the stocks that I gave
them were—

Q. (Interrupting.) This is in Baltimore. Did you give them to
Nick Cohen?

A. Nick Cohen, yes, in the presence of Arnstein. 100 shares of American Car Foundry Co. 200 shares of Denver & Rio Grande preferred. 100 Wheeling & Lake Erie. 100 Goodrich Rubber. 200 American International. 600 Union Pacific. And 100 American Beet Sugar. That is all.

Q. Now then, you got your money there?

A. I got my money there, some of it.

Q. You got your money right in Baltimore?

A. Yes; in Baltimore. Not all of it; he always kept back some—I don't know; I could not keep track of what he kept back of that at any time, even with the 8 per cent.

Q. Do you know where they took those bonds in Baltimore?

A. No. I didn't go with them.

Q. Did you ever go to any bank in Washington with them?

A. No, I did not. But I know he must have drawn some money from the bank; because he had to go to the bank.

Q. Do you know what bank he went to?

A. No.

457 Q. In Washington?

A. That I cannot say.

Q. You went with him, didn't you?

A. No.

Q. You never saw him in any bank?

A. No.

Q. Then you came back — Baltimore; is that right?

A. Yes sir. Then I made another trip again, to Philadelphia.

Q. What did you take to Philadelphia?

A. I stopped at the Vendig Hotel under the name of Joseph Holt over night. He called me up there, I think a Long Distance call, I am not sure.

Q. Who did?

A. Nick Cohen called me up there that night. I went there on a Sunday I remember, because every place was closed. That was on a Sunday that I arrived there. I waited over until Monday. I gave him 400 shares of Mexican petroleum. 70 shares of Baldwin Locomotive. 200 shares of Crucible Steel. 100 shares of Guffey Gillespie. And 30 more shares of Baldwin Locomotive. That makes it 100 all together. 100 shares of Texas Company. That is all. On one of those trips I gave him a Wilson bond. It is not down on any. But it was not in Washington though.

Q. Are those the only trips you made?

A. The second trip I gave him that Wilson bond. The second trip that was to Boston. The Wilson bond was given in Boston I guess. He has not got it down here. Those are all the trips I made.

Q. Have you told us now all the securities of every kind, that you gave to Cohen and Arnstein?

A. Yes sir.

Q. You are sure about that now?

A. Almost positive, that I can remember.

Q. And you have told us all the cities that you were to?

A. Boston, Washington, Philadelphia, and Baltimore. Yes sir.
So far, with Nick Arnstein and Nick Cohen.

Q. Well, do you know whether Arnstein and Cohen were getting securities from other persons like yourself?

A. I don't know, sir.

Q. Have you found out since?

A. Since then? I don't know.

Q. What do you believe? Do you believe they have?

A. I guess so.

Q. Well, can you think of any names of any persons that have been giving securities to them, just like you were giving them?

A. No, I cannot.

Q. Well, what about this fellow Andy?

A. He didn't give any to them. Nobody there knows this fellow, but Stahl. I am the only one, outside of Stahl, that knows

450 Nick Cohen; or I am the only one that knows Nick Arnstein.

Q. Do you know about the market value of these securities pretty well?

A. Not now. I did.

Q. Well, what was the market value of all the securities that you gave to Arnstein and Cohen, at the times that you gave them?

A. That I cannot tell you.

Q. Well, can you figure it out for us now?

A. At the time? That I could not tell you. I guess I know a couple; that is about all, one or two.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

(At this point a recess of one hour was taken for supper.)

460 In the Matter of NICHOLAS ARNSTEIN.

New York April 30th, 1920.

After Recess—8 p. m.

Present: Mr. Myers.

JOSEPH GLUCK, recalled, testified as follows:

Examined by Mr. Myers:

Q. You have told us, have you, of all the securities of any nature, kind of description which you gave either to Nick Cohen or Nick Arnstein, is that right; to the best of your recollection?

A. Yes sir.

461 Q. And you have told us of all the securities of every nature, kind and description that you have given to Harry Wolf?

A. Yes sir.

Q. Now, what ones did you give to the Count?

A. 500 Southern Pacific; 100 American Can; 700 Boston & Wyming. That is all.

Q. Did you give any securities to any one else?

A. No sir—100 American Tobacco to Byrne.

Q. You told us about that. So that we get the record straight: The only persons to whom you have ever given any securities, are, first: Harry Wolf, is that right?

A. Yes sir.

Q. And then Byrne?

A. Yes sir.

Q. And then Arnstein and Cohen?

A. Yes sir; and The Count.

Q. And no one else?

A. No.

Q. Did you ever give any securities to any member of your family?

A. No sir.

Q. Or any relative?

A. No sir.

Q. Or any friend?

A. No sir.

Q. Or anybody else?

A. No sir.

Q. Now, you are sure; that closes that chapter, does it?

A. Yes sir.

Q. Now, tell us of stolen securities by any other persons, giving us the names of the persons, and the securities stolen?

A. In my case do you want to know?

Q. Outside of your case. We will come back to your case.

A. The only thing I can tell you, the fellows that dealt in it. You have got Andy, the one-arm fellow.

Q. What is his last name?

A. I don't know.

Q. He is a one-armed fellow?

A. Yes.

Q. He hangs out outside of the New Street side of the Stock Exchange?

A. Yes sir. Everybody down there knows him.

Q. What about Buck Connell?

A. He deals in stamps and bonds and everything else; he buys them.

Q. And he can be found at the same place?

A. The same place.

Q. He handled some of the stolen bonds of Wolf?

A. Yes sir.

Q. Now, when did you first get acquainted with Furey?

A. The night before New Year's; December 31st.

Q. Now tell us fully, in your own way, how you got acquainted with Furey?

A. Adler was in the store at the time, see——

Q. (Interrupting:). Who is Adler?

A. That is Jack Adler.

Q. A son of Jacob Adler, the actor; is that right?

463 A. Yes. I have known him before. I have known him some time.

Q. You have known him?

A. Yes; I was introduced to him by Chubby.

Q. Did you know Jack Adler up to that time to be a bad boy; a thief?

A. Yes; I understood he was bad.

Q. Did you know him to have stolen?

A. No; I never knew that.

Q. But you knew that Chubby had stolen?

A. Oh yes.

Q. Now, Alder came to your home, is that right?

A. Yes sir.

Q. In the Bronx, or in Mount Vernon?

A. In Mount Vernon. He stayed there until——

Q. Adler and Furey together?

A. Oh no.

Q. Adler first?

A. Adler was in the store at this time—do you want to know about that?

Q. I want to know the whole thing?

A. Well, he was in the store. He came down to see me at my father's store; I was in the store at the time, and he just asked me for his hat. He was at my sister's wedding, and he left his derby there. He was leaning against the counter there, and in comes The Count and Furey. "Hello Joesy old boy," the Count said "We have got you right this time" he says.

Q. Who was doing the talking?

A. The Count.

464 Q. He said to whom?

A. To me.

Q. He never met you before?

A. No sir.

Q. He came in with Furey?

A. Yes sir.

Q. And Adler was there?

A. Yes sir.

Q. Did Adler know they were coming?

A. I will tell you that later. I didn't know at the time; I wasn't supposed to know that—Adler wasn't supposed to be implicated in it, see. He was supposed to keep me in the dark. And then The Count flashed a badge, and he said "Come on along; get your hat and coat, and come on along." My father says "What do you want him for?" He said "You can see him down at the District Attorney's office after three." He took me along—he hired a cab. It seemed funny. They went through the park, see. And Adler said—oh no; when we were in the store, Furey looked at Adler and

he said "Your name is Adler, isn't it?" Adler says "No." He said "You have been up before, haven't you?" Adler says "No." He takes off his hat and looks at him good, and he said "You have been up before," and grabbed him along; he said "Come on along with us."

Q. That was all phony, wasn't it?

A. Yes; that was all phony. They hired a cab. And in the cab Adler was talking to me. He said "I can't go there; I can't go there. Because they want me down there," he says. Then The Count started to talk to me and told me about the different hotels I have been at, which Adler no doubt told him I suppose.

Q. Where did he find that out?

A. I don't know; from friends up there, I suppose.

Q. What friends?

A. Friends that knew that I was there.

Q. To whom you had been talking?

A. Yes sir. And he mentioned Hoboken to me; and I kind of thought he knew a lot when he mentioned Hoboken. And he mentioned stocks and securities being stolen down in Wall Street, and everything else. And Adler says "Can I speak to this friend here awhile?" to The Count. Adler said that to The Count. He said "Sure; no objection." And Adler was telling me he was afraid to go down to the District Attorney. He said he is out on bail. I said "For what?" He said "I can't tell you just now; but they will beat the devil out of me if I go down there," and he suggested that we do business with the detectives. Adler was the one that suggested that. I said "What for?" I said "I don't know nothing." I just denied everything. "I don't know nothing at all." I said I was willing to go down there. And he said "We will stop off at some place and we will talk to them." I said "All right, if you want to." And we stopped off in 110th Street and St. Nicholas Avenue, a restaurant up there. And he says—The Count started telling me what I have done, and all that. And he says "If you want to have something to eat, you might as well eat now." I said "I will have a cup of coffee." I had a cup of coffee there. Adler talked to me. He told me he will try to do business with them. He said "Listen; if you will let me out now"—I can't recollect just exactly how he said. He said "I will give you \$1,000 to get out of it." I didn't say nothing. At that time The Count said "A man in my position can't do that." He started in saying "What do you think I am, crazy?" The Count said he would call up the District Attorney. He went in the phone booth in the restaurant there, and called up—he went in and made as if to call up somebody; I don't think he did. He came out, and he said "I guess we will have to be going." Adler said "Wait a minute. We can get around this here thing." And he started talking. Adler said "Now, we can do business with these fellows; they seem to be all right." "All right" I said, "Can I call up my father?" He said "Sure, why not?" I called up my father, and my father started crying on the phone; he was scared stiff. He didn't know what happened. And that broke me down a lot too; I didn't care what

did then. I said "Well, listen, I've got \$2,000 in the bank; I will let you have that."

467 Q. Where did you have it; in what bank?

A. Up in the Corn Exchange Bank.

Q. In Mount Vernon?

A. Tremont Avenue, and Arthur Avenue. He didn't see that I offered him everything I had.

Q. What else did you offer him?

A. The car.

Q. What car; the Stutz?

A. The Stutz; and the

Q. That car you had bonds?

A. Yes; the car I got

Q. And the ring you

A. No.

Q. Where did you go

A. I will tell you later

Q. Well, go ahead?

A. I went uptown with my father everything went back to my father everything was all right. Alder was playing on my side all the time, you understand; he was in with the other two fellows, you see, I did not know that. A I go back to my father, and my father said "What is the trouble?" He didn't know anything about what I had done until that time. He didn't know anything. I

468 told him I was in some oil stock business with some people.

He didn't know what I was doing up till that time; that is the time he found out. He never knew that I was stealing stocks you know—getting stolen stock certificates. I told my father. He said "Well, the only thing to do"—he thought they were detectives himself at the time; they looked like detectives. I told him what I had to give up. He said "Well, it is better than laying in jail. You will break mother's heart."

I said "All right." I went back, and went uptown with him. I went up to Tremont Avenue, to a Notary Public, and I signed over the Stutz car, over to Furey. Furey seemed to get fresh: He'n't going to bother. First they went out. He said something about "We will tend to that fellow later on." Furey said. He went over to another Notary Public; I don't know just where that was; between 71st and 172nd Street, where I signed the car over; but not into anybody's name; just blank; the name blank. We went over to the garage where the car was kept; it was being repaired; it broke down. And I told the proprietor over there that this was the new owner of the car. Of course I didn't tell who, or anything like that.

now." He said "Yes."

The Count at the

469 got the money

\$2,000. That I

Who did you give

A. The Count got the money.

Q. You handed that money to The Count?

A. Yes; and the ring I handed to The Count.

Q. Who did you turn the car over to, the bill of sale?

A. The bill of sale I turned over to Furey. Furey had charge of the car. Well, then I went back, and Furey said he had to go downtown with Adler, and the Count said "I will meet you down at the quarter." He said "I want to speak to Joe while." He said "This is your only chance; I am going to treat you white. If you get any more black certificates hidden away or anything like that, I will let you know." He says "You won't have to worry any more, I will take care of you." He said "I will let you know in a day or two."

Q. You handed over to him the 300 shares you have told us about?

A. Yes; that is all I handed over; that is all I had. I had the left over from the time of the Sullivan case. They were gotten before that; they were a few months old at that time, see. Ned Cohen and Nick Arnstein went away without letting me know anything, right after the Sullivan case, and I didn't know where they were. So I didn't know what to do with the certificates; I was about to destroy them; but I said "No, I might as well keep them here, something may turn up." I left them up at the house. When he left me he said he would let me know in a day or two; he would send me a telegram from Philadelphia. Well, he did send me a telegram from Philadelphia, to my house. You can trace back the telegram.

Q. What month was it?

A. In January it was; about January 2nd or 3rd; something like that.

Q. It was signed by whom?

A. Well, that was, he said "I will send you a telegram, Joe." And he put it in an official way.

Q. Who sent that?

Q. Go ahead.

A. I went up to Furey, and Furey said "Listen; I just thought pretty nice fellow" he said; "I will give you back it to talk to The Count first." That is the first time I knew who the Count was. I never knew his name. He called him The Count. He said "You gave him something, didn't you?" I said "Yes, I gave him some stock certificates." He said "He didn't say anything about that." I said "He didn't?" And I told him what I gave him; to Furey. Furey said in appointment with him in front of the Capitol k." He said "Come up there and I will do it." I went up there and waited on the other side by I think it was—the Winter Garden is right opposite the theater. And he didn't meet anybody; The Count came back and he said "Well, he double crossed me." I said "Well, I am going to give you the car back; for repairs on the car; I would like to get that." He said "What about all the rest of the money?" He said "That was split up; and the ring, too." I said "What ring?" "Oh, a fellow up here in the Oregon Building." I said "All right, I will give you the \$260," or whatever it was; I don't know exactly. I went down and borrowed some money from my father; I didn't have no money. I went and borrowed it off my father; and I came back, and he said "Here is your bill of sale." And I turned over the money, and I took the bill of sale and I ripped it up. I had the original bill of sale, which I got when I bought the car from the Stutz people myself, and paid cash for it.

475 Q. How much?

A. I paid \$1 \$3,545 for the car, and it was about—the car stands with the insurance and all, about \$4,000; \$4,000, or \$4,100.

Q. Go ahead.

A. I then went up to—he then took me up to the dealer where the car was kept, and in front of the dealer at the time he said "This is the fellow that got shook down for that car; that I took the car from. I am going to show him that I am a pretty good fellow; white people. e. I am going to give him back the car." Pretty nice.

Q. Is the fellow he spoke to an Irish appearing fellow; slim?

A. No; he is a Jew, I think.

Q. Frank, do you think?

A. No. I could point him out easily enough. Well, I said "I don't want the car; I have no money now; I might as well sell the car." He said "All right; I guess you can get about \$2,600 for it." I said "The car was, you know. I said "That would be all right." I left the car there for a couple of days, and he didn't sell it. So he took it down to another place, and the man bought it there. And he made Furey endorse that check. That amounted to, \$2,400, the check. I am not certain,

476 Q. The check was made to Furey's order?
 A. I don't know; but he endorsed it. I don't know whether it was to my order or his. I know he endorsed it; I seen the check; it was up in the District Attorney's office. They had that check up there. And he went down to the bank and cashed the check. Well, the party that he sold the car to, he had to get \$100 commission for selling the car, see. I gave him \$100; and I gave Furey another \$100 out of the car. He said "Listen Joe; if you want to get that ring back"—the ring cost around \$1,600. He said "If you want to get that ring back, I will tell you, I can get the party to give you that ring back." I said "What does he want for it?" He said "It will cost you \$1,200." I said "What, \$1,200?" I said "Buy my own ring back for \$1,200?" Anyway I bought it, because I wanted to get the ring back, because it didn't belong to me. I got the ring back, and gave him \$1,200. I gave the other fellow \$100, and I gave Furey \$100. He then spoke to me, and he said "Listen Joe, I have done you a good turn; now you do me a good turn. I will get hold of the Count and I will get the money off him. I want you to come up to Canada with me, and I have got an outlet up there that you can get rid of these stocks."

Q. Where?

477 A. Up in Canada. He said "I have got an outlet where I can get rid of those stocks."

Q. When was that; fix the time?

A. Well, about a day or two after the car was sold.

Q. What month: now fix the month?

A. It was in the month of January. I didn't want to go with him. I said "No; I am through." I said "I don't want to." He said "Now listen; you come on along." I said "Listen Furey; I don't want to bother with this thing any more. I am through. Whatever I done, I didn't get nothing out of it. I have got nothing out of it now." I said "I am clean now." I says "And nobody knows what I have done. I am going to stop. That is all." He said "Listen"—he was talking it into me. He said "Come on along; we will go fifty-fifty on the expenses, and we will go up to Canada." I thought it over; and he insisted; and I went to Canada with him. We stopped off at Hamilton, Ontario—the first stop, he went to see a party up there.

Q. Who?

A. First we went to Cleveland, rather. He went to see somebody himself; I don't know what it was about. He said he had some business there.

Q. Well, don't you know where he went?

A. I don't really know. I was up at the hotel.

478 Q. Did he go to see a man named Sullivan, in the automobile business?

A. I don't know; he didn't tell me.

Q. You don't know what street he went to?

A. I know we slept at Euclid Avenue somewhere—that was the first time I have ever been in Cleveland; I don't know.

Q. Don't you know what hotel you went to?

A. In Euclid Avenue—I think the Euclid Hotel. And he went up there, and that is where he started to tell me to go under the name of Joe Green. I went under the name of Joe Green in that hotel.

Q. In Cleveland?

A. Yes. I went under the name there of Joe Green, and he went under the name of Mason I think, at that hotel.

Q. Ed. Mason?

A. Ed. Mason. He said he had to meet a party; to stick around the hotel. Well, I think we were there a couple of days; and he had money at the time, and I had money. When his business was through, he said "Let's go now; I am all through here. Let's go up to Canada."

Q. Was anybody pointed out to you, or were you pointed out to anybody by him?

A. Pointed out?

Q. Yes; did he bring any men around to point you out to the man?

A. No; he didn't bring any men around.

Q. Sure?

479 A. No; he did not bring no men around. Then he went to Buffalo, and we stopped at a hotel in Buffalo over night, because the train going into Ontario—there was not any that night.

Q. What hotel?

A. Right off the station there in Buffalo.

Q. The Iroquois?

A. No.

Q. Statler?

A. No; it was not Statler's. He told me not to say anything about this hotel, too.

Q. You can't remember the name?

A. It is right on the same street with the Station; it is just a couple of blocks up. We only stopped there over night; just slept there. Then we took the train out early in the morning. We took the train out to Hamilton, Ontario and we stopped off at a little hotel there.

Q. Do you know the name of it?

A. No sir, I do not. At Hamilton, Ontario there is only a couple of hotels. It is a small hotel. He met a party there.

Q. What kind of a looking man did he meet?

A. The way he told me, it was a confidence man too; a wire tapper.

Q. A big stout fellow?

A. No. It was a classy fellow; it was an old fellow; a fellow about 50 or 55 years old; and he was one of these gamblers, you know; he had a brown derby. Had a full face, but all
480 wrinkled up. He spoke to him, and he was supposed to meet him—this party was supposed to meet him in Montreal, this certain party; in Montreal, Canada. He went up there to meet Jim Kean. His idea in going up to Montreal was to meet Jim Kean.

Q. Who was to meet Jim Kean?

A. Furey was to meet Jim Kean, with me. And we took the train out from there and we went to Montreal.

Q. When did Furey first tell you that you were to meet Jim Kean?

A. Jim Kean?

Q. When you were in New York?

A. No.

Q. In Buffalo?

A. At Hamilton, Ontario.

Q. That is the first time he mentioned Jim Kean's name?

A. Yes sir; the first time.

Q. And he told this party that he met, to also meet him at Montreal?

A. Montreal, at a certain hotel. I think it was the St. Lawrence Hall where we stopped at. We then went into Montreal, and we stopped at the St. Lawrence Hall. Before we went to the St. Lawrence Hall, we went in the Queens Hotel to look for Kean; and we met Kean and Hayes up there.

Q. You mean Haines?

A. Haines. I was introduced to both of them. They were talking about a boat being burned up, of course.

481 Q. Furey, Haines, and Kean, and you; is that right?

A. Yes sir.

Q. The four of you met at the Queens Hotel?

A. Yes sir; the Queens Hotel; we had breakfast.

Q. Did you talk over anything about securities?

A. Not there; not then.

Q. From there where did you go?

A. From there he told me he was going to take us to a good hotel; one of the oldest hotels in Montreal. And he took us up to the St. Lawrence Hall.

Q. The four of you?

A. The four of us.

Q. And you went to the St. Lawrence Hall; the four of you?

A. The four of us went there. Then Haines went away; he left.

Q. Why did he go away?

A. No reason that I know of. Haines went away; and Furey was talking to Kean alone. I went to the room for a while. And I came down—I washed up; and Furey told me "Come over here," and I came over there; and he was talking to Kean. He said: "Listen: Kean can make connections up here in Canada, and dispose of stocks." He says Kean said he had a brother or someone, or a cousin, working in a bank.

482 Q. Kean said?

A. Kean said that; and he was going to speak to him first, and meet us later on in the day. Well, I stayed in the hotel all the while; it was very cold up there; and Kean came back and he said that his brother or his cousin, whoever he was, said that up in Canada now that they won't loan much money on securities; the brokers can't bring more than \$30,000—can't get a loan on more than \$30,000 of securities at a time. That is what his brother, that was working in the Bank of Nova Scotia, I think it was, told him. And Kean

said he was in the Secret Service at one time up there, and he knew everybody up there. He said "I am going up to see a big broker up here by the name of Bryant & D" something; "Dunn." I don't know what it is; Bryant & something.

Q. Bryant & Dunn?

A. Bryant, Dunn & Company, in Canada?

Q. Yes.

A. And the firm downstairs to the one you mentioned.

Q. Fairbanks & Gosselin?

A. That is run by the same people. And this fellow was living with a woman—the way it was rumored, that Fairbanks was living with some woman, not his wife; and he had to run away, because the books were all fixed up; he had done some crooked business, and he had to go away anyway, this fellow Fairbanks. Anyway, they
483 were afraid they had to appear in Court—I never saw Bryant; never seen Bryant or any of these people. But the way Kean told me, they were willing to dispose of the stuff; but he had to do it in large quantities. He has got to go away anyway; I might as well pass the stock down to him, and have him get rid of the stock, and he could go away; blow. Well, that was all settled; and they agreed on the price of 80 per cent. The broker was, according to what Kean said, to give 80 per cent of what the stocks were worth. Well, we went back to New York——

Q. (interrupting.) Before you went back did you say anything about \$5,000,000?

A. No.

Q. To Kean?

A. No.

Q. Did Kean say anything to you about a million dollars?

A. Well, he said something about large quantities. He said—yes, that is right too. He said something about that broker could dispose of any amount; it could be in the millions. He could dispose of any amount. Furey told me that the man had a million dollars in cash, waiting up there for stocks.

Q. What did Kean tell you?

A. Kean said: Yes, he could; the man could handle any
484 big quantities. He said "It can be in the millions." But he would not handle no small things.

Q. Did Kean appear to be anxious to be in this deal?

A. Positively.

Q. Well, Kean testified that Furey had to coax him.

A. Coax him? Not that I know of.

Q. Not that you observed?

A. No sir. He was very anxious. He was speaking to me all the time about it. He said he would like to come into it with us. I even mentioned to him that I didn't care to go into it; I didn't want to get in bad down there; that I turned over a new leaf; "I am not in any trouble now; they have nothing on me; and they never will have anything on me. I don't want to get in any trouble." I told him that. He said "Well, we might as well do it now. This fellow"—and I explained to him the shake down; and he laughed.

And then Furey explained to him about the shake down also. We then went back to New York.

Q. Wait now. Before you got back, did you say anything to Kean about being the missing link?

A. Missing link? Oh, I told him that Sullivan was up—yes, I did say something similar to that. I didn't use "missing link"; I used something similar to that.

485 Q. What did you tell him?

A. Oh, I think I told him that Sullivan was on trial now, and they can't do anything with Sullivan; they ain't got nothing on him. I said "Those two parties that delivered the stock to him are missing." And I said "I am missing." I guess Furey mentioned, or maybe I did mention, missing link; I am not certain about that. "We must be the missing link" I said; "They will drop the whole thing; They have nothing on Sullivan."

Q. Did you tell Kean that you could get him an unlimited amount of securities?

A. I must have—yes, I did tell him about that. I said "I guess—I never had any trouble getting them so far; there should not be any trouble now," I said.

Q. Well then, did you tell Kean about all that you had stolen previously?

A. I told him, yes sir. I told him; but I exaggerated though.

Q. Did he keep asking you "Are you sure; are you sure of what you can do"?

A. No sir, not that I can remember.

Q. Nothing like that took place?

A. Not that I can remember. He was anxious to do it; I know that; he was all excited.

Q. Did he ask you why you were not arrested?

A. Why I was not arrested? No sir.

486 Q. Did you tell him about your Washington trip?

A. I don't remember; I may have told him.

Q. Did you tell him you had been in Rochester?

A. No sir.

Q. Were you ever to Rochester?

A. Never in my life.

Q. Did you tell him about going to Binghamton?

A. Never.

Q. Were you ever to Binghamton?

A. No sir; I never was there.

Q. Did you tell him it was easy getting these securities?

A. I certainly did, yes sir.

Q. But that the public was not wise?

A. The public was not wise? I don't remember saying anything like that.

Q. Did he tell you that he didn't want any double crossing?

A. No sir.

Q. He didn't want to be led into a trap?

A. Into a trap? No sir. What he did say was "If you do get

those stocks, you handle them yourself; don't let Furey handle them." The way he spoke, he mistrusted Furey.

Q. Was Arnstein's name mentioned?

A. Arnstein? No sir.

Q. Or Cohen?

A. No sir. George may have been, or Mack may have been mentioned.

Q. Were those names mentioned?

A. They may have been; I am not certain.

487 Q. Well, were they mentioned?

A. I won't say. I may have mentioned them, and maybe not. But I didn't know their names at that time. I never knew until I was locked up. Did he state that they were mentioned; that Arnstein was mentioned?

Q. No.

A. I never knew Arnstein's name at that time.

Q. Now, go ahead with your story. Then you came back to New York?

A. Then we came back to New York. He told me to get some boys down there to get the stocks. I said I was almost sure I could. I was going to the doctor at that time, being treated, and a couple of boys in there, they were talking about Wall Street. I said "Do you know Wall Street?" They said "Yes." I said "I was working down there myself at one time." I told him I worked down there as an extra, and all. I mentioned to him about—I called him on the side, in the doctor's office, one of the boys; I don't know his name; I don't know either of their names. But they were up there and testified. I called them aside and I told them about how I was in Canada, disposing of those stocks. And they were only too glad to go into it. They said "What will I get out of it?" I said "Your share would be 20 per cent. Twenty per cent; you go up in Canada with us, and you get your

488 20 per cent for it."

Q. Who did you tell this to?

A. To one of the boys in the doctor's office.

Q. You don't know the names?

A. No sir.

Q. What doctor?

A. Down at—Rosenthal; his name is Dr. Rosenthal—I think it is Rosenthal.

Q. What street?

A. I don't know. On the Eastside there; on Norfolk Street.

Q. What is he, a dentist?

A. No sir.

Q. Gonorrhea specialist?

A. Gonorrhea specialist. They have got the name up at the office I can't recollect.

Q. All right; go right ahead.

A. We went outside; we went down in the street; and the other boy was with me too. I didn't know his name; and he spoke to the

other boy and he said "I know a fellow downtown that I can get to do anything I say". I said "I don't like to go downtown". I very seldom go down there. I never went down there before on all the other securities that were gotten; I never was down in Wall Street at the time. I was always uptown. But we went downtown, and he introduced me to somebody in Broad Street, a fellow, I don't know his name either. We went into a restaurant at 50 Broad Street; he worked up in 50 Broad Street, or 40 odd Broad Street; I don't know what the number was in Broad Street. He worked for some Curb House there. And he didn't want to do it. He didn't want to get any stocks; he didn't want to bother with it. He said he could hire those two boys; and they could do it, and he would not be blamed for it. They hired them as extras, you see, and they could go away and he would not be blamed for it. The other boy said Curb boys would not pay; too small stocks. That was a Curb House. And he mentioned Murray Fox up with Parrish & Company. And then the boys took me up to Murray Fox, up to Parrish & Company. He was only too glad to do it. We went up, and he introduced me to Murray Fox down there, and we went uptown and had something to eat in a restaurant. And the other two boys, we left them up in a poolroom up on Broadway and 42nd Street; and I took Murray Fox—Murray Fox wanted to meet Furey. I said "Come on along with me". And Furey was up with Jim Kean at the Claridge Hotel here. I took Murray Fox up to Jim Kean; introduced him to Jim Kean and Furey. I said to Murray Fox: "Here is Mr. Furey and Mr. Kean". I introduced them, but under different names, I think; I am not sure. I am not certain about—I told him to wait outside a minute, and I went inside and talked to Furey and told him about this fellow here, that could get stocks; that he works for Parrish & Company, a big house down in Wall Street; and he wants to come in on this. I said "You can talk to him if you want to. I am not going to talk to him about it. You can talk to him about it". Murray Fox went up into—we then called Murray Fox into the room, and Furey was talking to Murray Fox, and told him about some institution up in Canada. I didn't know what he was getting at. He told him about some institution up in Canada that could put the stocks away up there for about six months. And he told him about how he would have a drawing account, and all the rest of the money in the bank—I mean the rest of the money in the bank. He said "And in about six months, you can come back again and everything will be forgotten." Furey told him. He seemed to be satisfied then. He then went downtown—he made an appointment with me for a couple of days later, or a day later, I am not certain, to meet him at 106th Street Subway Station at 9 o'clock in the morning. He then went downtown, and we made an appointment where he could meet Furey in front of the Woolworth Building, and the other boys—I forgot to tell you about the other boys. They were willing too. They were going to get jobs as head runners down with Halle Stieglitz & Company, and they were go-

ing to get stocks too, the three of them. Murray Fox and
491 the other two boys—I am skipping quite a lot there; I just
thought of it. But it don't amount to anything at all though;
so you know, if anything is left out, it don't amount to anything.
Well anyway, he went down there, and Furey waited outside in
front of the Woolworth Building. But Murray Fox didn't bring
anything that day. Neither did the other two boys. He said "An-
other day yet". And we went away. Furey went uptown, and
the boys went uptown. The boys said—I had mentioned about my
brother before that. And he said "I can get him a job down at
Parrish & Company". I said "You can?" He said "Yes". I said
"I will send him down". And we made the same appointment;
106th Street, for the next day. And neither of them—nobody
showed up that day at 106th Street. I then left it all go until
Furey called me up, or I called Furey up; I don't know which. And
Furey told me that Murray Fox was down there and wants to
meet me. It is very important; he wants to meet me and my
brother downtown. I can't just say the meeting place; I think
it was in the building at 71 Broadway, downstairs, right by the
Subway there—no; 111 Broadway, rather. We went down there,
and Murray Fox met my brother. He was going to get him a job
in Parrish & Company. I then went uptown. I went up to
492 the Claridge and was talking to Kean up there. And they
were talking about—Furey was talking about getting rail-
road tickets the same day to go right to Canada. Kean said the
broker is up there—he made arrangements with the broker up there,
with a million dollars in cash waiting for the securities. Well, we
didn't get anything I don't think that day. No, the boys did not
do anything then; and they just dropped out of it, the other two
boys. And Murray Fox—my brother could not get a job with
Parrish & Company. Well, nothing happened that day. The next
day they went downtown and met at the same place; Furey was
supposed to meet them in front of Riker-Hegeman's Drug Store;
and my brother was supposed to go down and get a job. I went
down there about 12 o'clock to find out how everything was going
along. Furey said he was to come up here with a big loan of about
460 some odd thousand dollars worth of securities; two loans. Mur-
ray Fox was going to come up there with—he was supposed to make
the loans, you know, and instead of making the loans he was sup-
posed to come up there and give them to Furey. I asked him what
time he expected him up there. He said "He ought to be here now".
I said "I will go downtown and see him, if you want me". He said
"Yes, go down". I went down, and I met him. He said
493 "You wait up there with Furey. I will be up there in a
little while." He said "I will come up. You go up and
meet Furey, and I will be up there in a little while. I have got to
make a delivery." He said "The runner there promised me to give
me those two loans." I then went uptown; and my brother could
not get any job. I told him to go home. He said "No, he didn't
want to go home." He stuck around down there. I went up and
saw Furey at Riker-Hegeman's drug store; and Furey said "What

did he say?" I said "He said he will be up here in a minute. Stick around." I said "I am going to have a bite." I went around the corner to a restaurant to have something to eat, with my brother. I then came back, and Furey said "Wait here a minute. I want to go in the drug store to buy something, in Riker-Hegeman's drug store." I waited there. He was not in there a minute when Murray Fox came up there. He said "Joe, I have some stock certificates in my pocket. You take them out, see; don't let nobody see them." And there was something funny struck me, that he was talking extra loud at that time. Louder than he should have. And all of a sudden I seen a man around the corner, and he had his head sticking out.

494 Later on I found him out to be Detective Minheim. He was sticking his head out. I was wondering what was going on.

I said "Sh." I was going to drop the certificates. I didn't know what happened. He was talking loud, Murray Fox was. I said "Keep quiet." I went in to Furey, and I said to Furey "I have got some stocks." He said "Hold on to them. I will be out in a minute." I said "All right." All of a sudden, Minheim comes over to me and Murray Fox was right there with me at the time, and he said "I will be back in one minute. I am going to get that loan pretty soon." He was talking loud. Minheim came over and said "Give me that." I said "What?" He said "That, in your pocket." And he stuck his hand in my pocket and took out the stock certificates. And after that, I can't remember. About twenty detectives came; Brown and Mayer got hold of me and slammed me in the jaw. Coming from all sides. There was two in Riker-Hegeman's drug store. Murray made an attempt to run away, but he didn't. He could have, if he wanted to; nobody went for Murray.

Q. Did you take the certificates out of Murray's pocket, or did he put the certificates into your pocket?

A. No; I took them out of his pocket. He told me to take them out. He said "Take it out of my pocket."

Q. What certificate was that?

A. I don't know; I never saw it. I didn't have a chance to look at it. As soon as I put it in my pocket, I went over to Furey, 495 and I came back, they grabbed me; it didn't last a second.

Q. Does it occur to you now that Furey framed it?

A. Either Murray Fox or Furey framed it; I don't know which one of them did; because there was a lot of detectives around; it was a big crowd.

Q. Is it possible that they both framed it?

A. I can't say; it may be possible.

Q. Who knew Murray Fox first; you?

A. Oh, I did.

Q. You did?

A. Sure. I introduced him to Furey.

Q. Well, there is no doubt that Murray Fox framed it. The only question is whether Furey was in on the framing w/ h him?

A. I don't think he would be; because he is laying in there in jail now.

Q. That would not prove it.

A. Then I don't really know.

Q. Murray Fox is in jail with you too?

A. No; Fox was not in jail at all; he was let go right away; that very minute; as soon as it happened he was let go. And that crying was just a stall. He was crying there; he made an attempt to run away, and nobody ran after him. Mayer got hold of me and punched me in the jaw, right out in the street. He said "Come on
496 along with me." And he took me over, right over to this building. (Referring to the Federal Building.) Here in this building, on the first floor. And later on my brother came in. I seen Furey come in too.

Q. You got in New York on the 28th of January, didn't you, 1920?

A. Yes sir.

Q. When you came to New York, who did you meet first?

A. Furey.

Q. Where did he meet you?

A. We met at his hotel.

Q. Which hotel is that?

A. The Oregon Hotel.

Q. That is West 47th Street, near Broadway?

A. Yes sir.

Q. Then you and Furey, did you meet Kean?

A. Not then.

Q. How long were you in New York before you met Kean?

A. It was about a day or two.

Q. A day or two; that would bring it to the 30th of January, wouldn't it?

A. Yes sir.

Q. Then you talked about stealing bonds, with Kean, didn't you, in the presence of Furey and yourself?

A. Yes sir.

Q. At no time during those four days did you go down to meet some boys, or have boys call on you. They did not get any bonds; they went down to steal them, but did not get any?

A. Well, those two boys I mentioned about meeting in the doctor's office—

497 Q. (Interrupting). You were doing that four days before February 4th, weren't you?

A. Yes sir.

Q. Will you tell in your own way about the detective listening at Kean's door, and what Kean said about that?

A. Sure. Kean said "I just got tipped off by O'Brien, the clerk downstairs, that there is a couple of men inside in the next room here. He says that only one man registered"—Kean says "The clerk said only one man registered, and he would go down and leave the key downstairs, and the maid would go upstairs and find out there was a couple of men in the room, after he left the key downstairs."

Q. Was that just shortly before you were arrested?

A. That was a couple of days before.

Q. That was just two or three days before you were arrested?

A. Yes. About the 7th.

Q. About the 7th or 8th of February, 1935?

A. Yes sir.

Q. Prior to February 4th, Kean, you and Furber with some boys, but did you not get an

A. But did not get an couple of men in there. worth Building?

498 He knew some people.

Q. How much have been stealing these

A. Well, I gave him some money numerous times, but I always got it back.

Q. Well, how much would you say?

A. I don't know; about \$1,000 or so. I always got it back though.

Q. You simply loaned him \$1,000?

A. I would not loan it to him exactly. I told him to hold it for

me; it was too late to go downtown to the bank, or so. I always

would tell him to hold it for me. He would return it to me. He

gave me more than that. I must have given him more than that.

He gave me a number of times money; I can't just recollect how

much it was. More than \$2,000; a great deal more than that.

Q. What about the diamond ring; was that gotten with money

you had received from the stocks?

A. No. I bought the ring back with money that was gotten from

the stocks, see.

Q. Where is the ring now?

A. Mayer or Brown took it off me. They took the ring off my

finger.

Q. In other words, you originally bought the ring with money

that you received from the stolen securities; is that the idea?

A. Not stolen. But the money that was paid off for the

400 ring was from the stolen securities.

Q. How much did you pay for the ring?

A. I think it was about \$1,000; I don't know.

Q. Where did you buy it?

A. I don't know; I didn't buy it. It was my mother's.

Q. Your mother gave it to you?

A. It is her stone; it was her stone.

Q. She let you wear it?

A. It was her stone.

Q. After you gave it of the proceeds of the

A. Yes sir; and then

to; a diamond stick pin.

Q. Was that jewelry

certified?

A. No. That was a

Q. That jewelry had

In the Matter of NICHOLAS ARDRETT

New York, May 30th, 1933. (4 p.m.)

~~Present~~

~~Present~~

~~Present~~

~~Present~~

~~Present~~

Examined by Mr. Gluck:

Q. Mr. Gluck, as I understand, all the persons to whom you gave your services were Nick Arndtson, Nick Cohen, Harry Wolf, Hyman, and the Count?

A. Yes.

Q. Can you think of any other names?

A. No sir.

Q. Did you give any to Furay?

A. No sir. There is another name I want to give you later

on; he is in with Wolf.

Q. You had better give it to us now.

A. Fritz something.

Q. Pissanourice?

A. No; he is implicated with Harry Wolf.

Q. Is it Pissanourice?

A. No; not "Pissanourice." It is not "Pissanourice," no. Fritz is his first name. I will get the rest of it, too. I can get it for you, but I don't know his second name.

Q. Where can we find him?

A. I don't know; Harry will tell you that. He lives up in the Bronx I guess.

Q. Do you know where in the Bronx?

A. No; but he goes—he hangs out in that neighborhood there; Forest Avenue & Longfellow.

Q. What street?

A. Longfellow Avenue; a street near Longfellow & Webster.

Q. Longfellow Avenue & Webster Avenue?

A. Yes.

Q. Is he there?

A. No; but he goes there; he hangs out there; he hangs out there.

Q. Is he there?

A. No; but he goes there; he hangs out there; he hangs out there.

Q. Is he there?

A. No; but he goes there; he hangs out there; he hangs out there.

Q. Is he there?

A. No; but he goes there; he hangs out there; he hangs out there.

Q. Is he there?

A. No; but he goes there; he hangs out there; he hangs out there.

Q. Is he there?

A. No; but he goes there; he hangs out there; he hangs out there.

Q You don't know his nationality?

A (No answer.)

Q Do you know how old he is?

A About 24.

Q Do you know where he works?

A He doesn't work, so far as I know.

Q Do you know whether he is an ex-convict or not?

A I can't say. But he got securities from other people.

Q How did he get from you?

A It was with Harry Wolf; both are the same thing; they

did you give securities to both, or did you just give to Harry Wolf?

A To both.

Q Did you give to Harry Wolf?

A Yes, to Harry and Wolf.

Q You can't possibly remember Fritz's last name?

A No, but I know I can get it.

Q Well, how could he be with Wolf?

A Yes.

Q They would be found together?

A They usually go together; they are partners—they are sort of partners in the deals, and in everything else.

Q Has Harry Wolf been a thief?

A He must have been before I met him; I don't know. But he doesn't steal them; he receives them; he receives.

Q He is a receiver of stolen securities?

A Yes.

Q And Fritz is also a receiver of stolen securities?

A Yes, that is right.

Q Now, tell us all you know about Fritz; because we want to get down to the bottom of it.

A You may always see him at the corner of Exchange Place; I don't think he goes down there any more, he's been cleaned up down there now. But he was in with the bunch; and Dave.

Q You didn't tell us about Dave; you told us about Connell.

A I told you about Dave?

Q We've not got him; Dave who?

A I don't know him by any other name.

Q Tell me about Andy, the one-armed fellow.

A Yes.

Q Is there another one, Dave; is that right?

A Yes.

Q Now get to Dave, let us stick for a while to Fritz. Tell us about Fritz.

A He got bonds from all those boys whose names I have mentioned other I can't mention.

Q Now all together has Fritz received of stolen securities?

- 507 A. He generally takes bonds; don't handle stocks.
 Q. Then he is a bond thief; a bond receiver?
 A. Yes sir.
 Q. How much did he receive in stolen bonds, to your knowledge?
 A. From everybody?
 Q. Yes.
 A. That I could not say.
 Q. Well, how much do you know of?
 A. I have known him—one fellow to give him three, four, five,
 \$6,000 worth of bonds.
 Q. Well now, how much do you know he has received all together,
 from all sources?
 A. That I cannot say.
 Q. What is your best information on the subject?
 A. I have known other boys too—I don't know; I haven't got
 nothing on him; that is why I can't mention; but I know that they
 received bonds, and all that.
 Q. How much did Wolf receive from all sources that you know of?
 A. I don't know.
 Q. How much approximately did he receive from you?
 A. About \$20,000.
 Q. That is all he received from you, Wolf?
 A. Yes sir; with 100 shares of Bethlehem Steel; that is \$10,000.
 Q. That is \$30,000 all together?
 A. Yes; \$30,000, with the 100 shares of stock.
 508 Q. Then Wolf has stolen, to your knowledge, or received,
 about \$30,000 worth of securities?
 A. Yes sir.
 Q. And Fritz, you don't know how much?
 A. Well, they worked together. I could not say.
 Q. Well, all together do you think that they received as much
 as \$100,000?
 A. I guess so, in that time, yes.
 Q. \$500,000?
 A. No; I won't say that.
 Q. Now, you have told us about Fritz; do you know where he
 lives?
 A. No.
 Q. Do you know who his father is?
 A. No; I don't think he has a father.
 Q. Or his mother?
 A. He has a mother; I don't know anything about them.
 Q. Any brothers or sisters?
 A. I don't know.
 Q. How tall is he?
 A. Well, a little short fellow; about five foot seven; five foot six.
 Q. 24 years old?
 A. Yes.
 Q. Weighs about how much?
 A. About 145.
 Q. Light or dark?

A. Light complexion; a good looking boy.

Q. Any mustache?

A. No.

509 Q. A natty dresser?

A. Yes; plain, but neat.

Q. Any characteristic features that you can point out?

A. I think he has got a little cut over his eye.

Q. A little cut over his right eye?

A. Yes; right over his right eye; sewed up, you know; something like that.

Q. Pompadour hair?

A. I don't know.

Q. Did you ever give any of those securities directly to Fritz?

A. I don't know; I think I have.

Q. Can you say what?

A. No; I can't say what.

Q. Was that the same as you described that you gave to Wolf?

A. Yes; the same.

Q. You include those in what you said you gave Wolf?

A. Yes sir.

Q. Were they together at any time when you gave them to him?

A. Yes.

Q. How many times? In all transactions?

A. No; not in all transactions; two or three times.

Q. The \$20,000 worth you gave to Wolf and Fritz together?

A. Yes.

Q. \$30,000 worth, with the stock and bonds together; is that the way to put it?

A. Yes sir.

510 Q. Did you give any securities to Fritz in New York County, or were they all in Bronx County?

A. I think I gave those 3 United Kingdom bonds to him downtown, in New York County.

Q. Where; give us the address?

A. The corner of Exchange Place; in front of the Continental Bank.

Q. Can you fix the time?

A. I don't know what time it was.

Q. Did you give any to Wolf in New York County?

A. No; not in New York County.

Q. You are sure about that?

A. Positive.

Q. Did you give him any money, or did he give you any money, in New York County?

A. No sir.

Q. Did any of your transactions take place in New York County, with Wolf?

A. Not with Wolf, no sir.

Q. Well, be sure. Did you ever meet him in New York County?

A. No sir.

Q. You never met in New York County?

A. No.

Q. He never gave you any money in New York County?

A. No sir.

Q. He never received any money from you in New York County?

A. No sir.

Q. You had no transactions with Wolf at all in New York County?

A. No sir.

511 Q. Did you have any talks with him in New York County?

A. No.

Q. Did you ever 'phone him from New York County?

A. From New York County? Yes, I 'phoned him.

Q. And did he 'phone you?

A. Well, no; he could not reach me; I was on the outside.

Q. Did you ever write him any letters?

A. No sir.

Q. Did he ever write you any letters?

A. No sir.

Q. While I am on this letter question, before I get away from it: Did you ever write any letters to Nick Cohen?

A. No sir.

Q. Or receive any from him?

A. No—I received one from Nick Cohen; that is all.

Q. Where was he?

A. I received it at the Pennsylvania Hotel.

Q. (Question repeated.)

A. He didn't put any address down; nothing at all; he just mailed me—

Q. (Interrupting.) It came through the mail?

A. It came through the mail. He only gave me—what was in the envelope, was a statement of the arrest of somebody with Crucible Steel, from Washington; a Washington newspaper.

Q. Where was he when he wrote the letter?

A. I don't know.

512 Q. You have not kept the letter?

A. No sir.

Q. Nor the envelope?

A. No. There was a check in it—a check for my valise, my grip at the Pennsylvania Station, that he mailed to me—he left that grip at the Pennsylvania Station, the same as I left the grip in Washington at some station, and I gave that to Nick Arnstein.

Q. Let me get that right now. You say he left your grip at the Pennsylvania Station, in New York City?

A. Yes sir; for me.

Q. And then he put the receipt, or check for it in an envelope, and he mailed it to you care of the Pennsylvania Hotel, New York?

A. Yes sir.

Q. Is that right?

A. That is right.

Q. And that was in what month?

A. The first day—when that party was arrested in Washington; at Sullivan.

- Q. You mean Williams?
A. Williams.
Q. That was in November last; is that right?
A. Yes sir. He mailed it to me.
Q. Was there a letter accompanying that?
A. No; just a clipping, and my check.
Q. What was the clipping; of that arrest?
A. Of the arrest in Washington; a Washington paper.
513 Q. That check was for your valise?
A. For the valise.
Q. And in that valise there were stolen securities?
A. No.
Q. What was in the valise?
A. Some old clothes of mine.
Q. Was that the valise that the stolen securities were in though, when you gave it to them?
A. Yes sir, that is right.
Q. That is the same valise you took on the train?
A. To Baltimore.
Q. And the grip that Arnstein and Cohen wanted to examine on the train, and you had a quarrel?
A. No; that was another trip. On the trip to Baltimore, I left the grip at the Union Station—is that in Baltimore?
Q. Yes.
A. And I checked it there, and gave the check to Nick Arnstein. He must have passed it to Nick Cohen, or passed it to Sullivan, and Sullivan went down and took it I guess.
Q. That is the same grip that had the bonds in on the other trips?
A. No; I once had one of those small—what do you call those cases?
Q. Dress suit case?
514 A. Not dress suit case; a brief case I had at one time.
Q. We are trying to find out to what extent these parties used the mails. Will you tell us in your own way——
A. (Interrupting.) No sir, not at all.
Q. Well, they did with that receipt for the grip.
A. That is all; that was the only thing; the only time.
Q. Do you know where we could find Harry Wolf?
A. Up at his house.
Q. At that address that you gave us?
A. Yes.
Q. Will you give us the same kind of a description for him that you gave of Fritz? How tall is he?
A. Harry Wolf?
Q. Yes.
A. About five foot four, five foot five, or something like that—shorter than that I guess.
Q. About how much does he weigh?
A. About 140 pounds.
Q. Is he light or dark?
A. Medium; he is neither light nor dark.

Q. Clean shaven?

A. Clean shaven.

Q. Has he got any mark on his face?

A. No sir.

Q. What kind of a nose?

A. Roman nose.

Q. What kind of eyes?

A. I don't know.

Q. Has he any cuts on his face?

A. No sir.

515 Q. Any marks anywhere?

A. Not that I noticed.

Q. Is he a good dresser?

A. Yes; a pretty fair dresser.

Q. What is his father's name?

A. I don't know. He has a store on Prospect Avenue & Webster Avenue I think.

Q. Do you know what business his father has; what kind of a business?

A. Women's wear. He has been indicted.

Q. Harry Wolf has been indicted?

A. Yes.

Q. I know that. Now, outside of Harry Wolf and Fritz and these other parties whom you have mentioned, do you know any other persons; do you know any others?

A. Not that I can think of just now.

Q. We want you to think, because this is the time; we want to get through with it now. What about Rosenthal?

A. Who is Rosenthal?

Q. Well, Rosenthal is a boy down in the Street there who has been handling a lot of securities with a fence on the East Side?

A. I don't know.

Q. Did you ever hear of Rosenthal?

A. Never heard of him.

Q. Do you think that might be the David that you speak about?

A. He is dark, David is; you would take him for an Italian. He lives in Union Avenue, David does.

516 Q. Up in the Bronx?

A. Yes sir.

Q. Do you know what number?

A. I don't know what number.

Q. Near what street?

A. I don't know. He lives quite close to Harry Wolf.

Q. If we find Harry Wolf, will we find Dave?

A. If you will get Harry Wolf he will tell you where Dave is, if he wants to, if he knows. (After referring to telephone book.) That name is L. Wolf; 831 Webster Avenue. That is the father of Harry Wolf. He works in that store, or he is a partner in that store; either one.

Q. Now, this is the time to think of all the names, Gluck, because this is the time for you to tell everything in detail; and you

want to be sure now, for your own good, that you give the names of every one that ever received any securities from you.

A. Well, all those boys didn't receive securities from me.

Q. What is that?

A. All those boys did not receive securities from me.

Q. Well, the ones that have received securities from you, so as to have the record clear, are Nick Arnstein?

A. Nick Arnstein.

Q. Nick Cohen?

A. Nick Cohen.

517 Q. Harry Wolf?

A. Harry Wolf, and Fritz.

Q. And Byrne?

A. And Byrne.

Q. And The Count?

A. Yes sir.

Q. Now, Fritz you say, did not receive any except a few from you?

A. Yes; a few of them.

Q. Dave did not receive any from you?

A. No.

Q. He received them from other boys?

A. Yes.

Q. And one-armed Andy received them from other boys?

A. Yes.

Q. Buck Connell received them from other boys?

A. Yes.

Q. Now, do you know of any others?

A. And another fellow there, McCollough; he received them from other boys.

Q. Do you know what McCullough has received?

A. No, I don't know.

Q. Or from whom?

A. I surmise he received some from Harry Wolf; I don't know.

Q. Do you know what Connell has received?

A. Yes; he is a partner with McCollough; both of them work together.

Q. And Andy?

A. And Andy delivered to Harry Wolf. Dave delivered to Harry Wolf.

Q. Let me get that straight then: Dave and Andy were
518 the ones that did the stealing?

A. Well, I would not say they did that. I know they had bonds in their possession.

Q. They were the boys that got bonds directly from the messenger boys?

A. I know they had bonds in their possession.

Q. They either stole them, or got them from messenger boys?

A. That is it.

Q. And they turned them over to Harry Wolf for disposition?

A. Yes.

Q. Dave and Andy would turn them over to Harry Wolf?

A. Yes.

Q. And Harry Wolf would turn them over to Connell and McCollough?

A. I would not be sure about that. Harry Wolf I think was turning them over to Connell.

Q. And Connell and McCollough were in partnership; is that right?

A. Yes sir.

Q. Where does Connell live?

A. He lives in Brooklyn; Buck Connell; I don't know where though.

Q. Do you know his connections; how he can be found or traced?

A. Down in Wall Street; down in New Street.

Q. What number on New Street?

A. Right by the Stock Exchange.

519 Q. How old a fellow is he?

A. Connell?

Q. Yes.

A. Oh, about 27 or 28 years old.

Q. Can you describe him?

A. I could not describe him very well; I could not just remember.

Q. Well, can you describe McCollough?

A. No sir, I could not.

Q. Well, have you now given us the names of all the persons who either stole securities, to your knowledge, or had stolen securities, to your knowledge, or who received stolen securities, to your knowledge? Have you answered fully now?

A. Yes sir. I may know some that I just can't think of now.

Q. When are you going to think of them?

A. Any time you want me to. I would not like this to be known, that I am giving these names out, you know.

Q. Well, suppose we will agree not to give it out?

A. I would not care to have my name given in connection with them; that is all I want.

Q. All right. Now give us the rest of those names?

A. Tommy Tiernan—I don't know whether it is Tiernan or Keenan. He is wanted in connection with those stocks, down in Halle & Stieglitz. They are looking for him now; he ran away. I know of him.

520 Q. What do you know about him?

A. Well, he used to deal in stamps; mostly in stamps. He used to work down in L. L. Winkelman.

Q. You don't know where he is now?

A. No.

Q. Do you know how much he stole?

A. No, I don't know.

Q. Did he steal anything from Winkelman? Is he the fellow that robbed Winkelman, from over near Bath Beach or down that way somewhere?

A. I don't know. I know he lives in the Bronx.

Q. The fellow who got a suspended sentence?

A. I don't remember.

Q. Remember, Gluck, we are trying to help you. Now we are giving you this opportunity now of telling everything, so that it cannot be said that you have not helped the administration of justice. We want to be fair with you.

A. There is two other names I am not sure of; there are two other boys; I know they are crooked all right——

Q. What are the names?

A. I can't think of their names just now. You remember the grocery store up there, where two fellows were arrested? A whole-sale grocery store there; and there was loot downstairs; a
521 bunch of stolen stuff, up in the Bronx, on what avenue is that again? I haven't got it on my mind. They were let go. Well, they bought up a lot of stolen stuff; they dealt in bonds and everything. They had a broker; I know the broker; he was down in South Carolina. On Willis Avenue and 140 some street. Those two boys owned that store; underneath they kept their loot. Those two boys buy up everything; they got bonds and everything; and jewelry and everything.

Q. Josephson?

A. No. One of the boys comes from Yorkville; Jewish names. I can find out the names; I can get them easy enough.

Q. We are trying to get this cleared up to-day.

A. I am trying to clear it up myself, but I can't do it. I know his name is Mike, or something.

Q. Did you ever give them anything?

A. No, I never gave them anything. I think Harry Wolf did give them something already. I met their broker at one time; a broker they had from South Carolina. They got a broker down there.

Q. Do you know his name?

A. I don't know; I can't think of it now. I didn't keep notes of those things.

522 Q. What part of South Carolina?

A. I don't know.

Q. Charleston?

A. I don't know; I could not say. He was stopping at the Hotel McAlpin. I don't know what his name is.

Q. Well, it is important to get these names, you know.

A. Well, if I would know, I would tell you. I know I met him; I have talked to him, but I forget their names. I can't remember every name. I talked with the other two boys. I have talked with Tomroy Keenan. That is about all I can think of the names of.

Q. Now, can you think of any other securities?

A. No.

Q. We marked some securities here the other night with a question mark. No. 35; 10 Commonwealth Petroleum?

A. I heard of a lot of stocks being burned; but I cannot swear to it.

Q. No. 79; 400 shares of Producers Refining; I marked that with a question mark.

A. I don't know.

Q. No. 87; 175 shares of Sinclair Consolidated Oil Co.

A. No; I don't know about that.

Q. No. 104; 100 shares U. S. Food Products. Do you remember that?

A. No sir.

Q. No. 106. You said you knew of a bond. There was 300 U. S. Rubber common and 10 U. S. Rubber preferred. You said "I know of a bond," and you referred that other to afterwards.

A. Yes; a U. S. Rubber bond.

Q. You referred that stock to later. Do you know anything about that?

A. Not of the stock, no.

Q. 300 shares of U. S. Rubber common?

A. No.

Q. Let us get down to something here now. Was Nick Cohen ever to your home?

A. Yes sir.

Q. State when.

A. About February 4th.

Q. What was he doing there?

A. He came up to renew business with me. He said he had an outlet in Philadelphia; he wanted me to get stocks for him.

Q. Did he meet your folks?

A. My mother was in the house.

Q. Was she introduced to him?

A. No; I don't introduce her—yes, I did too; I think I did.

Q. Under what name was he introduced?

A. I can't think; I gave him some phony name; some name that came to my mind.

Q. Tell us everything that took place?

A. I just told him—I told my mother I had some business with this gentleman; oil stock business.

Q. What business did you have? What did you say to him and what did he say to you?

A. We were upstairs; and he told me that he had an outlet over in Philadelphia for some stocks. He said he had a broker there that could not use more than \$100,000 worth of stuff; and if I could get it for him. I said "No; I would not want to bother with it." He said "Think it over, Joe. You are throwing it away. He says I could go out of town with him; and he said "And I will take the stocks from you, and an hour from then I can give you the money for them."

Q. This was after the Furey deal, was on; after your trip to Canada?

A. Oh, after the trip to Canada.

Q. This was long after the trip to Canada?

A. Not long afterwards; around the same time; we were only back a few days—let's see; was that after? I got these dates mixed up.

Q. Around February 4th you sat in with Kean up in the Claridge Hotel?

A. Well, it was around that time anyway.

Q. How many times was Cohen to your home?

A. Once.

Q. That is the only time?

A. That is the only time.

Q. Did he meet your brother?

A. I don't think he did.

525 Q. Did he meet your sisters?

A. One he met, yes; my younger married sister. She was home with my mother.

Q. She was introduced to him too?

A. Yes; I introduced her. He just spoke to them for about a minute as he went downstairs to go out.

Q. Was Arnstein ever to your home?

A. No sir.

Q. Were you ever to Arnstein's home?

A. No sir.

Q. Or Nick Cohen's home?

A. No sir. He told me to meet him at Bretton Hall one night that week, about—after the show. I was going to a show. I told him I would be down there about a quarter to twelve. I never met him. Then he called me up again at the house; I was home. And he asked me if I thought it over. I said "Yes." I said "No, nothing doing." He wanted to know what reason. I said "No; no reason. I don't want to bother with it."

Q. Well, was there any reason? Was the reason, that you were dealing with Kean and Furey?

A. No. I didn't want to bother with anybody. I was forced to be with them. If I wasn't, I would get locked up anyway.

526 Q. Well now, have you told us of all your relations with Nick Arnstein? If you have not, this is the time to come through with everything.

A. No; that is all I can think of—oh, I spoke to Nick Arnstein over the 'phone the day he called me up at home.

Q. When was that?

A. He was away for a couple of months, after the Sullivan case. And when he came back, he had a mustache—Nick Cohen did.

Q. Nick Cohen?

A. Yes; he had a mustache when I last saw him.

Q. We are speaking about Nick Arnstein now?

A. No; Nick Arnstein was just talking to me over the 'phone for a minute. He asked me how I was; that is all.

Q. Well now, do I understand you to say that Cohen and Arnstein ran away after the trouble in the Sullivan case?

A. Oh yes.

Q. Do you know where they went?

A. No. They told me they went out West; that is what they told me.

Q. Do you know what place?

A. No.

Q. Cleveland?

A. I don't know; they didn't mention the town. But they told me—at the time of the Sullivan case, the Sullivan arrest, they told me they were up to that Pelham Heath, whatever it was, that I read about in the paper; that was true; they did have a meeting. They called me up in the Pennsylvania Hotel from there, at the time they were up there that day.

Q. You mean the day they were up there with Sullivan and Easterday?

A. Sullivan and Easterday and Arnstein. He called me up and told me to go to Atlantic City for a couple of weeks, until everything blew over. You have not got a bond down there, I don't think. I mentioned a bond, but it is not in Sullivan's confession I don't think.

Q. What bond is that?

A. That is a Wilson bond that was delivered to them on that Baltimore trip I think, or the second trip. Which was that? Baltimore, or Philadelphia, or Boston; which was it?

Q. Boston, wasn't it?

A. Boston; the second trip; that was given to them in Boston then; a Wilson bond. That is not in the confession of Sullivan.

Q. Now, as I understand it, you were in the following cities with Arnstein: Washington, Philadelphia, Boston, and Baltimore?

A. And Hoboken.

Q. Were you ever in Canada with him?

A. No.

Q. Were you ever in Canada with Cohen?

A. No.

Q. Can you recall any other transactions of any kind that you ever had with Arnstein or Cohen?

A. No sir.

Q. Can you fix the time when Arnstein and Cohen came back after the Sullivan trouble?

A. The first time I heard of them was the time I mentioned; around February 4th. Because I went down to Washers Cafe and asked if they saw either—I didn't ask for Arnstein or Cohen; but I described the parties; he knew them well. He said "They haven't been here for a couple of months."

Q. What were you looking for them for?

A. I was looking for them because they were supposed to call me up, and they haven't called me, up, see, for about two months.

Q. Do you mean they owed you money?

A. Well, they owed me money also; that was the cause of it.

Q. Well, did you get it?

A. No. They claimed the banks were tied up with the money—it was tied up for 60 days or 90 days; after that they would get their money, they said.

Q. Well, how much were you to get all together from Arnstein and Cohen?

A. All together? I figured on 8 per cent.

Q. On how much? 8 per cent on how much?

A. On the face value.

Q. Well, what was the face value?

A. That I don't know. It was different trips.

529 Q. Well, 8 per cent on all the trips, how much did that amount to?

A. Well, how much was the whole amount?

Q. Well, I want to know from you.

A. I don't know. All I understood, \$100,000—I never figured it up; I never kept any record of that.

Q. Cannot you tell now?

A. I could not tell. It is about right; \$600,000 is about right; that is what I figure.

Q. You were to get 8 per cent of that?

A. Yes.

Q. About \$48,000?

A. About \$48,000.

Q. You only got 20?

A. 20; and I gave out 11 of that.

Q. What has become of the other 9,000; can you tell that?

A. Oh, it was eaten up; and with the car; that cost \$4,200.

Q. \$4,200 for the car?

A. Yes; and \$1,750 for The Count, that he took off me, \$1,750 out of the bank. And the Canadian trip cost a whole lot; I spent a lot of money in Atlantic City; and things like that; repairing the car; for repairs.

Q. You did not give any to your mother or father?

A. Well, I gave them money, but they always gave it to me back. I just gave them to hold for me until I could put
530 it in the bank.

Q. You say your mother and father have not got any money out of this?

A. No sir.

Q. Or your sisters?

A. No sir—I may have given my sister maybe \$5 at a time.

Q. I mean, isn't one of your sisters in the laundry business?

A. My sister? No. Her husband; my brother-in-law.

Q. Did you put him in business?

A. No.

Q. Was he in business before you started these thefts?

A. That I don't know. I don't know if they have got their business built at all. He said he would have to close it up, from what he said; maybe they are rebuilding it.

Q. Did you ever give that sister any money, that was married?

A. No.

Q. Or your brother-in-law?

A. Yes sir.

Q. What is his name?

A. I don't know his right name.

Q. What?

A. I don't know his name.

Q. Oh, you must know your brother-in-law's name.

A. Krakow; something like that. They just got married lately.

Q. They would not get married without your being there, would they?

531 A. I very seldom met them. I was away in the Army; don't forget that. Then I came back; I very seldom saw them. I was very seldom home. I was living in hotels; I was very seldom home after I came back.

Q. You know when your sister got married, don't you?

A. I know, yes.

Q. You were at the wedding, were you not?

A. Surely I was at the wedding.

Q. Where was the wedding?

A. On 3rd Street somewheres; some hall there.

Q. What is his name?

A. I don't know; I think it is Krakow.

Q. What is his first name?

A. Dan.

Q. Where does he live?

A. I don't know. He lives around 160 some odd Street; I don't know where it is. I was down there one time, with the car, to take them to the wedding; that was the only time.

Q. What month did they marry?

A. That I don't know.

Q. You don't know what month they married?

A. No sir.

Q. Did they marry in January?

532 A. I don't know; either December or January, something like that. Around those two months.

Q. Did you put your father in business?

A. No sir.

Q. He was in business for quite some time, was he?

A. No, he was not in business long; but he always had money. He was in the auction business; he used to buy and sell stocks. Then he opened a little store downtown, in 50th Street & Second Avenue; he had some stuff, he sold. After I was put away he had to pay money out for me. (Producing Army Discharge.) That was when I was in the Army; November 6th 1916, to March 22nd 1919. That is not the original; a duplicate. I lost the original.

Q. Well now, are these lists correct, of the securities, which you gave us, which you said you gave to Nick Cohen?

A. Yes sir.

Q. And to Nick Arnstein?

A. Yes sir.

Q. And to The Count?

A. Yes sir.

Q. And to Harry Wolf?

A. Yes sir.

Q. And to Byrne?

A. Yes sir.

Q. You don't want to change that in any way?

A. No sir.

Q. Did you ever meet David Sullivan?

A. I know I met him—

Q. Where did you meet him; in Washington?

533 A. I met him on October 13th last year, at the Pennsylvania Station; and once in Washington, in the morning at 9:30, the way I said up at the office there.

Q. Did you ever meet Easterday?

A. No.

Q. Or Bowles?

A. No sir.

Q. Did you ever meet Randolph Newman?

A. The lawyer?

Q. Yes.

A. No sir—I am thinking of Sugarman; not him.

Q. Did you ever meet Sugarman, the lawyer?

A. I was up in the office one time, with Mayer and Brown, and I met him—we were up there looking at him. Oh yes, I met Sugarman down at Dooling's office.

Q. Which Sugarman was it?

A. I don't know; a big fat fellow; stout fellow.

Q. Did you meet anyone else in connection with any of these matters, whose names you have not given us?

A. No sir.

Q. Well, did you ever meet Charles Drucker?

A. No sir.

Q. Or Eddie Winkler?

A. No sir.

Q. Or Phil. Kastel?

A. No sir.

Q. Or Louis Bleet?

A. No sir.

534 Q. Or William J. Fallon?

A. No sir.

Q. Why do you hesitate?

A. It was McGee I saw down in the Court Room I think.

Q. Did you ever meet Eugene McGee?

A. In the Court Room.

Q. Only in the Court Room?

A. Yes sir; with Sullivan.

Q. Did you ever talk with McGee?

A. No sir.

Q. Or Fallon?

A. No sir.

Q. Have you ever had any lawyer in this matter besides Mr. Aranow?

A. In this matter? No sir.

Q. Did you ever talk with any other lawyer?

A. About this here?

Q. Yes.

A. No. Only about the car; Frankel.

Q. Have you ever talked with any other lawyers at all about any of these stolen securities?

A. No sir.

Q. Have you talked with any other persons whose names you have not given us?

A. No sir.

Q. Did you ever meet any members of the family of Nick Arnstein?

A. No sir.

Q. Or any of the members of the family of Fannie Brice?

A. No sir.

Q. Did you ever meet any members of the family of Nick Cohen?

535 A. His sister, up in the Court Room there.

Q. You never knew her before?

A. No sir.

Q. Do you know whether that Count is Count Herikan?

A. Maybe; I don't know.

Q. You don't know his last name?

A. No sir.

Q. This Harry Wolf is an ex-convict, isn't he?

A. I don't know.

Q. You never heard that?

A. No.

Q. Is any one of these persons an ex-convict?

A. Fritz is I think.

Q. Do you know whether he served time?

A. No; only from his own lips he told me.

Q. What did he tell you?

A. He told me he did time.

Q. In Sing Sing?

A. I don't know.

Q. Did he say for what?

A. I think it was in connection with these bond thefts; I don't know.

Q. What?

A. I think it was in these bonds; I am not certain; I won't swear to that.

Q. Would you know The Count's photograph if you saw it?

A. I don't know, sure.

Q. Describe The Count again, as close as you can now. How tall is he?

536 A. He is over six foot; six foot tall; big.

Q. How much did he weigh?

A. A heavy man; about 190, 200 pounds.

Q. Was he well dressed?

A. No; just plain.

Good looking?

A. Good looking fellow.

Q. Light or dark?

A. Light.

Q. What color hair?

A. I don't know what color hair.

Q. What color eyes?

A. I don't know.

Q. What kind of a nose?

A. It was a small nose.

Q. Pug nose?

A. Yes; something like a pug nose.

Q. Did he have any mark or cut on his face?

A. Not that I can remember.

Q. Or on his ears?

A. Not that I can remember.

Q. Were there any defects, marks?

A. Not that I noticed.

Q. Well, how would you remember him best; by what?

A. Oh, just I can remember his face. He talks out of the side of his mouth; when he talked to me he did. I don't know whether he does that always or not.

Q. Did he ever talk about Boston to you?

A. He talked about Philadelphia; he sent me a telegram from Philadelphia.

537 Q. Did you ever know that fellow that wore a ruby ring?

A. I didn't take notice.

Q. Did you ever meet a fellow with him with two teeth out in front?

A. The only time I met him was with Furey. That was the only time I ever saw him; that was the only day.

Q. Now, have you told us the names of all the persons whom you met in Montreal, Canada?

A. Yes sir. Haines and—I didn't know his name until I saw him here; I knew that was the fellow though. Haines, Kean, and Furey; that is all.

Q. You did not meet anyone else up there?

A. No sir. Kean talked to some party that he knew; but I never spoke to him; I wasn't introduced to him—just talked to him for a moment. Supposed to be a crook; I don't know who he is.

Q. Was his name Bryant?

A. I don't remember; I would not know if you told me.

Q. Bernard?

A. I wouldn't know if you told me.

Q. Can you describe him?

A. I could not describe him.

Q. How do you know he was a crook?

A. Well, according to what Furey said—maybe Furey was lying; Furey told me that. So did Kean. And they were talking about a boat up there being burned, the "Oceanic."

Q. Was the name Beauvais?

A. I could not remember.

Q. Did you ever go to any brokerage house in Montreal?

A. No sir.

Q. Were you ever in Toronto?

A. Passed by.

Q. Never stopped off there?

A. We just changed trains, from Hamilton.

Q. Did you meet anyone in Toronto?

A. No sir.

Q. Did you meet anyone in Hamilton?

A. In Hamilton.

Q. Who did you meet?

A. I don't know what his name was; an old gent about 50 or 55; maybe over that.

Q. Was it Eddie Mines?

A. Eddie Mines; that is the fellow; that is right.

Q. Who was with him?

A. Furey.

Q. Just Furey and you?

A. Yes; and Eddie Mines.

Q. Is he a big man?

A. No; he is not big, but heavy.

Q. About 55 years old?

A. Yes sir.

Q. Now describe him?

A. He was flashy dressed; he wore spats, a brown derby, and one of these—his face all wrinkled up; full face.

539 Q. Red face?

A. Red face; grey hair.

Q. Any mustache?

A. No; he didn't have any mustache.

Q. Any cuts on his face?

A. I didn't notice.

Q. Any distinguishing marks that you can recall?

A. No. He looks like a gambler. Furey told me he is wanted; that is why he don't come here. They say he is worth 100, \$200, 000. He can't go to Montreal, because he is wanted in Montreal, I understand.

Q. Well now, what took place in Eddie Mines' home?

A. Sir?

Q. What took place there?

A. Furey talked to him; that is all. I just was introduced to him.

Q. Didn't you talk?

A. Well, I didn't say nothing; Furey did all the talking.

Q. Did you hear what took place?

A. Yes.

Q. What took place?

A. Oh, he remembered him; he said "How is everything?" Was talking about bonds that he could get, and stocks that he could get; Furey said to Ed. Mines.

Q. Was he asking Eddie Mines to handle them, after he stole them?

A. Yes; Eddie Mines was supposed to meet him up in Montreal. But he never met him up there, as far as I know. He stayed there after I did; I came back alone, from Montreal.

540 Q. You came back alone from Montreal?

A. Yes sir.

Q. Furey came back the next day?

A. The next day.

Q. Is that right?

A. That is right.

Q. Do you remember you sat in the lobby of the hotel at Montreal and the proprietor asked you what you were doing there; or he asked Furey?

A. He may have asked him; not before me. Only Kean said: "This fellow here suspected somebody here. It looks peculiar to be sitting in the lobby all the time, sitting around the lobby."

Q. I don't understand that.

A. He said——

Q. (Interrupting:) Who is "he?"

A. Kean.

Q. Kean said what?

A. Told me and Furey that the proprietor there was looking at us, and must be suspecting something, because we were sitting in the lobby all day.

Q. Have you told us all about Toronto now?

A. Yes sir.

Q. And Hamilton?

A. Yes sir.

Q. Have you told us all about Hamilton?

A. He was waiting there——

Q. (Interrupting:) Who is "he?"

541 A. Furey was waiting there for Kean; and he received a telegram from him.

Q. Waiting where?

A. At the hotel.

Q. What hotel?

A. It is a small hotel there.

Q. In Hamilton?

A. In Hamilton.

Q. Furey and you were waiting for Kean in that hotel in Hamilton?

A. He was; Furey was.

Q. Well, you were with him, weren't you?

A. Yes; but I didn't care if I didn't meet him.

Q. And you say Furey received a telegram from Kean?

A. Yes; from Kean.

Q. To what effect?

A. That he would meet him at the Station in Montreal, at a certain hour. He would meet him at the station at a certain hour. And when we arrived in Montreal Haines and Kean met us in the station.

Q. Well, I want to get through with Hamilton. I want to find out everything that took place in Hamilton.

A. That is all that took place there. I went to a show; he was busy around with Eddie Mines.

Q. Who was; Furey?

A. Furey.

Q. How many hours did Furey spend with Eddie Mines?

A. That I can't say. He was still with him——

Q. How many days?

A. With Eddie Mines? He must have been a couple of days—— about two days.

542 Q. And most of the talk was about these stolen securities?

A. Well, I only talked with Eddie Mines a few minutes; I have only talked to him a little while.

Q. At the time that you went up to Hamilton and Montreal with Furey, you had then stolen all the securities that you have told us about, except what was found in your pocket, which you received from Murray Fox; is that right?

A. Yes sir.

Q. All your stealings had taken place before that time?

A. Yes sir.

Q. And these talks with Eddie Mines and Furey were with reference to future stealings?

A. Yes sir.

Q. Which never took place?

A. Yes sir.

Q. Is that right?

A. Yes sir.

Q. Now, do you know why they did not take place? Why didn't they take place?

A. Well, you are asking me something that I don't know.

Q. Go on; tell us what you know about it?

A. Well, Kean was up at the hotel, up in the Claridge Hotel; and Furey was downtown waiting for Murray Fox. Furey said that he is going in the drug store—I came down there just to see how everything was going along. And Furey said "Wait out here for

543 Murray Fox; I expect him back pretty soon. I am going in the drug store to buy something." And he went in the drug store to buy something. And Murray Fox came along at that minute, and he told me to take something out of his pocket. I took it out; and I went over to Furey and told him—Murray Fox said—he started to talk loud; he said "I will be back in ten minutes." I have noticed the detective was hanging around there—I didn't know he was a detective; but I noticed he had his ears open and was listening; and Murray Fox was talking extra loud; very loud. I said "Don't talk so loud," and he was talking louder still. And this fellow comes over to me and he said "Give me that out of your pocket." I said "Give you what?" He said "What you have got in your pocket." And he stuck his hand in my pocket and took that stock. And Mayer comes over and hits me in the jaw; and Brown

comes, and a lot of other fellows I could not recognize; a whole bunch of them; two were in the back of the drug store; they were all around.

Q. Did it appear to you as if Furey had framed you up?

A. It appeared to me as if Murray Fox had framed me up; that is the way it appeared to me at first.

544 Q. Well, does it appear to you—

A. (Interrupting:) Furey was also framed; because he told me—I thought at first Furey did it. Then I realized he could not do it; because he was forcing me to go down—not exactly forcing me—but if I would not do it, he told me that Adler said that if I didn't give him any money that he is going down to the Police and tell them about me. So I had nothing to give him; I had to get money somewheres; Furey told me about that. They brought us over to the Second Deputy's Office there and questioned us.

Q. Do you know why Kean went back on you?

A. Why?

Q. Yes.

A. Yes; I think I have an idea.

Q. What is it?

A. O'Brien, the clerk downstairs, informed Kean that there was two detectives next door, in the next room. That was No. 1001 I think; or I think that was 1001, or we were in 1001; either one. I think there was two detectives in there, he says—there was more than two rather; he said that one man would go down and leave the key, and the maid would find two men in the room. And I think it was only one man that registered, the way Kean explained to me. And he put some paper in the keyhole. I was figuring—he

545 was out, you know; when I got downtown, and I figured, he was not there, and I found out that he was not arrested, and I suspected he was the one that done it.

Q. Why do you suppose he did that, after he agreed to go in with you?

A. Because the detectives caught him in the act.

Q. What?

A. Because he was caught in it, and the only way he could get out was to—he thought he was trailed; he saw he was trailed already, and thought the best way to get out of it was to go and make a clean confession.

Q. How was he caught? I don't get that.

A. I don't know how he was caught. I never heard from him until I saw him up here.

Q. You say he was caught first. How was he caught?

A. Well, rather, when two detectives were in the next room—that is my idea about it; I am just giving my idea about it; I am just telling you what I think about it. That Kean done that; because I don't think that Kean would go back on Furey otherwise; because they did a lot of things together. They always worked together, the way I understood. And Kean always talked well of Furey, and Furey always talked well of Kean. They were talking about dif-

546 ferent shake downs and pay offs, and I don't know what, that they used to do together. And when Kean was on the Detective Force in Canada, he told me something about cleaning out a fur place up there in Canada; and the proprietor came in, or somehow or other, and they put back the stuff, and nobody got locked up. He said he had all kinds of protection in Canada; that he knew everybody there.

Q. What I am trying to find out from you is how it came about that Kean squealed, after having made arrangements with you and Furey?

A. Well, the only way I can see, that Mayer and Brown went over to him and told him they would let him out if he would come across and tell; and the same with Murray Fox. Because Murray Fox was let go as soon as he was brought over to the Second Deputy's Office. He just made an attempt to run away; he didn't run away; he started to cry there, and they let him go ten minutes after, after he got into the Second Deputy's Office. And he appeared down before the Grand Jury against me, and he went right home; that was all.

Q. Well, I am not talking about Murray Fox. I am talking about Kean.

A. I know.

Q. How long was Kean in New York before you were arrested?

A. He was in New York almost a week; six days or so.

547 Q. Do you say he was arrested a whole week before you were arrested?

A. He was in New York a whole week before I was arrested.

Q. Do you say that he was caught by the detectives a week before?

A. Well, I don't know; I can't say that.

Q. How?

A. I could not say that he was caught by the detectives; that is what my idea was, when the two detectives were in the next room.

Q. What?

A. My idea was, two detectives were in the next room.

Q. Where did you get that from?

A. That is my idea; I didn't get it anywhere; only O'Brien said there were two detectives next door.

Q. Did he say who they were?

A. He didn't say who they were; but O'Brien maybe can tell you who; I can't. O'Brien, down there, the hotel clerk.

Q. Well, O'Brien knows them all, doesn't he?

A. I don't know. But he knows Kean pretty well; I know that. He knows him very well; and O'Brien tipped Kean off.

Q. O'Brien tipped Kean off that there were two detectives in the room next to him?

A. Yes sir; in the hotel.

548 Q. And you think that is what caused Kean to go down to Police Headquarters and squeal?

A. Yes sir.

Q. Is that right?

A. Yes. Because Kean was very anxious to do it. I am pretty

certain he would not double cross Furey, because he thought well of him; and they did a lot of things together; and he is always in for money. He was only too anxious to go in this thing. I don't see why he would double cross Furey; because he knew that Furey would come back at him on some other things, if he did. Furey himself told me; he said "Kean would not do it. If he would, I have a lot of things on him."

Q. Well, didn't you talk to Furey about this any time?

A. About this? No; only a couple of days ago—or rather, a week ago or so, Furey told me that he was up in Dooling's office until one o'clock in the morning. And he told me not to say anything; that he didn't say anything up there at all. He said he didn't say nothing; they just asked him about the extortion charge, which he denied; he said he denied everything. That is what he told me. He said "Now, don't you be against me bad."

Q. He said what?

A. He said "Don't try to mark me much in Court." He said "I think of you just as much now as I did before. I like you very much." He said "Nothing against you." I said "Why should you have anything against me?" I said "If I didn't meet you, I would not be in this trouble." That is what I told him. And I would not; because I was working in my father's store when they shook me down; working with my father; going out buying goods, and working with my father.

Q. You say that if it had not been for that shake down by Furey and The Count and Adler, you would have never gone back to stealing again?

A. Positively not.

Q. Well, then you did go back; after Furey and The Count and Adler took all these moneys and securities from you, you did go back, didn't you?

A. I did, after Adler said that he needed money, and if I would not give him money he was going to squeal on me; after he took everything off me, and I didn't have nothing to give him.

Q. Yes; but you could have also squealed on Adler, couldn't you?

A. Well, if I would have squealed on him—I didn't want to get in any trouble; that would only be revenge, and would only get me in trouble.

Q. It must have occurred to you that it would not help you any, to go into a 5,000,000 dollar bond theft, would it?

A. Would not help me any?

Q. No; you were going into a 5,000,000 dollar deal—
550 A. (Interrupting.) There was not 5,000,000; there was nothing like that, 5,000,000. That Kean said the broker had a million dollars in cash up there waiting for the bonds to come back; that he was in touch with a Canadian broker, he said. But there was no idea of coming down there for a certain amount; there was not any sure thing; only what Murray Fox said, he was going to get a large amount—the way he claimed, two loans amounting to 400 — some odd thousand dollars. That is what he was supposed to get and give to Furey. I didn't see Furey for a couple of days, and

Furey called my home up and told me to meet Murray Fox right away.

Q. Why did Murray Fox squeal?

A. That I don't know. The only reason I can think of, Mayer and Brown went over to Murray Fox and told him to come through with this thing; and he got all the facts out of Murray Fox that they could get, about this here thing, and then they had him go right through with the thing, and ask me to take the stuff out of his pocket.

Q. That was only after Murray Fox had voluntarily squealed, wasn't it?

A. He squealed about five days after he was known to Furey.

Q. What?

551 A. He squealed about four or five days after he was known to me and Furey.

Q. I mean, didn't he voluntarily go to Police Headquarters and squeal?

A. Not that I know of.

Q. And wasn't it then that Mayer and Fox arranged this matter?

A. Not that I know of. I don't know anything about that. If I did, I would not be here.

Q. Well, what other persons did you meet in any part of Canada at all?

A. That is all.

Q. Besides Kean, Haines and Mines?

A. That is all—and another party; I would not know how to describe him; I would not know anything, his name or anything.

Q. Where did you meet him?

A. In Montreal, in the hotel there; St. Lawrence Hall.

Q. You don't know his name?

A. No. He is a friend of Mines' I think, the way I understood.

Q. Do you know his business?

A. No sir.

Q. Do you know what he was doing there?

A. No sir.

Q. Did you ever hear the names of any brokers mentioned?

A. Yes sir—in Canada?

Q. Yes.

A. Those two names that you have said.

Q. Bryant, and Fairbanks & Gosselin; is that right?

A. Yes sir.

Q. Do you know Michael Kelly?

A. No sir.

552 Q. Alias Noonan?

A. No sir.

Q. Do you know the name of the man who disposed of the Stutz car?

A. No sir; it is a dealer on Broadway; I don't know his name.

Q. Didn't Furey go out to someone else to dispose of it?

A. Oh yes; he went in with a fellow to dispose of it.

Q. Some other man?

A. Some other man.

Q. Wasn't that Mike Kelly?

A. That may be; I don't know. I will tell you where I think he lives; around Eighth Avenue; some house, he was telling me about it; Eighth Avenue right over a garage—near a garage—over a saloon rather.

Q. You don't remember his name?

A. No sir, I don't remember his name.

Q. How old a man was he?

A. Oh, I should judge about as old as Furey. He looks something like Furey; a big man.

Q. Well, did Kean tell you what other deals he had been in with Furey on?

A. Only some shake down deals.

Q. Well, what were they?

A. I don't know. And the burning of that boat.

Q. What?

A. About the boat question.

553 Q. Well, outside of the steamer that was fired; did he tell you anything about Binghamton?

A. No.

Q. Or Rochester?

A. No sir.

Q. Did he give you any specific instances where he and Furey had been shaking down people?

A. He told me, on the boat question, there was somebody down here, at 1 Broadway, that they were going to shake down on that boat, Kean and Furey; they were to shake them down, but the people would not come across with the money.

Q. Do you know whether Haines has had anything to do with bonds or stocks?

A. No sir; he didn't have anything to do, as far as I know of. He was away all the time that Kean and Furey and I were together. He just came back for a few minutes, and went away again.

Q. What do you understand his connection with Kean to be?

A. On the burning of that boat; he was the one that burned the boat, they way I understand.

Q. What other connection did he have?

A. With Kean? Nothing that I know of.

Q. Did he tell you about Rufus Clark?

A. No sir.

Q. Did you ever hear Furey talk about The Count?

A. The Count?

Q. Yes; after you had given some bonds to him.

554 A. Yes; sure.

Q. What did he say?

A. He said if he ever gets hold of him, there will be nothing left of him. He will either come across with the bonds or the money. That is what he told me. He said he knew his name; but then, when I went over to him last week and asked him his name, he said to me that he did not know his name. I know for a fact he does know him; because a party upstairs on the fourth floor of the Tunk

who knows The Count, told me that Furey really does know his name. He said "If he don't give you his name, how do you expect me to give you his name?"

Q. Where is Gus Zeitman? Where can he be found?

A. I really don't know.

Q. What?

A. I don't know where he can be found.

Q. Did you ever hear of Joe Marino in these matters?

A. No sir.

Q. Did you ever hear of Norris?

A. No.

Q. Did you know anyone named J. H. Reed, R-e-e-d?

A. No sir.

Q. Did you ever know anyone named Ginsberg?

A. No sir. I have heard of him.

Q. You never met him?

A. No sir.

555 Q. Who did you hear of him from?

A. The District Attorney's Office.

Q. I don't mean that; I mean from any of these parties.

A. No sir.

Q. Zeigler, Z-e-i-g-l-e-r; did you ever hear of him?

A. No sir.

Q. Or Bailey?

A. No sir.

Q. Hays, H-a-y-s?

A. No sir.

Q. Or Daly?

A. No sir.

Q. Davis?

A. No sir.

Q. Gettysburg?

A. No.

Q. Kaiser?

A. No.

Q. Holmes?

A. No.

Q. Applebaum?

A. No sir.

Q. Eagan?

A. No sir.

Q. Maser, M-a-s-e-r?

A. No sir.

Q. Who did you see in Atlantic City in reference to this matter?

A. Nobody.

Q. How often were you down there?

A. I was only down there once, for about four days.

Q. What month?

A. In about the time the Sullivan case came up; I think it was about in December.

Q. Were you down there alone?

A. No sir.

556 Q. With whom?

A. With my brother and Herbie Bunero.

Q. Where did you stop?

A. At the Seton.

Q. Did you have two rooms?

A. Two rooms.

Q. Did you register under your right name?

A. No sir.

Q. What name did you use?

A. I think I registered under the name of Holt; my brother registered under the name of Holt; Irving and Joe Holt; and I think Herbie Bunero registered under the name of Green.

Q. Did you meet any of the crowd there?

A. No sir.

Q. You had no communication with them?

A. No sir.

Q. Who sent you down there?

A. Nick Cohen; he spoke to me about going there.

Q. Did he give you any money?

A. No sir.

Q. Did he call you up while you were there?

A. No sir.

Q. Were you ever at the Hotel Woodstock?

A. No sir.

Q. Were you ever in any other hotels in New York, that you have not told us about, in connection with this matter?

A. I stopped at hotels, sure.

Q. Where?

A. At the Grand Hotel; the Pennsylvania.

Q. The Grand Hotel, under what name?

557 A. I am not sure if it was my right name, or not; I can't really think of the name.

Q. The Pennsylvania Hotel under what name?

A. Either Holt or Gluck; either Holt or my right name.

Q. What other hotels?

A. I stopped at the Marlborough.

Q. Under what name?

A. The same.

Q. Were you always alone at those hotels?

A. Not always, no.

Q. Well, at the Pennsylvania were you alone?

A. No; I was with my brother.

Q. And who else?

A. That is all; and I met the boys up there.

Q. What boys?

A. Herbie, and this here other fellow.

Q. Zeitman?

A. Zeitman.

Q. Now, at the Grand, did you live there with your brother?

A. Yes sir.

Q. And at the Marlborough?

A. My brother.

Q. In any other hotels?

A. The Theresa Hotel, 125th Street.

Q. When were you there?

A. After this year—

Q. After the trouble with Sullivan?

A. After the trouble with Sullivan.

558 Q. Is that the time that Nick Cohen was living there?

A. No sir.

Q. Well, Nick Cohen did live there; you know that?

A. I understand from what you questioned his sister.

Q. And you were there at that time?

A. No sir; I don't think so. I never met him there.

Q. Under what name were you there?

A. I can't remember.

Q. Was your brother living there with you?

A. No sir.

Q. Just you alone?

A. Yes.

Q. Did you have any girls with you on any of these trips?

A. On the trips? No sir.

Q. Did Arnstein and Cohen introduce you to any girls?

A. No sir.

Q. I mean any prostitutes?

A. No sir.

Q. Did you ever have any girls in New York or elsewhere, in connection with this matter.

A. No sir; not in connection with this matter.

Q. Well, I mean that were introduced to you by Cohen or Arnstein, or any of the gang.

559 A. No sir. They were talking about—if I want to have a good time, I can go out with them; or I can have the use of his car. He had a machine—he had a closed car. I rode in that car one day in New York for a couple of hours.

Q. Whose car was it?

A. I understood, Nick Cohen told me that it was Nick Arnstein's car. Nick Cohen was in it, with the chauffeur, and I met them at Eighth Avenue; he had an appointment with me at Eighth Avenue & 47th Street at a certain time; and he would pass by. I met him up there, with the car.

Q. Do you know of anybody that worked in Clark, Childs & Company?

A. Now? No.

Q. Did you ever know anyone there?

A. No sir. I understood Rudie worked there.

Q. Who?

A. Rudolph Bunero worked there at one time I understood.

Q. Rudolph Bunero?

A. Yes sir.

Q. Do you know anyone down there who is a boxer?

A. No sir.

Q. Do you know anyone named Zudick?

A. No.

Q. Or Big Izzy?

A. No sir.

Q. Or Fitzmaurice?

A. No sir. I don't think the head runner is on the level, down at Clark, Childs.

Q. What is his name?

A. I don't know. I can get his name for you too.

560 Q. Well, make a memorandum of these things. Did you ever meet John J. Morey?

A. No, I never met him. He was in a room, and I don't know, somehow or other, Furey told me to go in the back; he went out; he didn't want me to speak to Morey.

Q. When was that?

A. Up in the Claridge Hotel.

Q. When?

A. When Kean was there.

Q. Well, what time; in February?

A. In February.

Q. The early part of February this year?

A. Yes sir.

Q. Now, who was in the room at that time?

A. Furey, Kean, and Morey.

Q. Furey, Kean and Morey?

A. Yes sir.

Q. And you?

A. I was not in the room.

Q. Well, do you know what took place?

A. No.

Q. You did not hear any of the conversation?

A. No sir.

Q. How long was this before you were arrested?

A. About four or five days.

Q. Well, do you know what Morey was doing there?

A. No sir; only—let me see. I don't know; they were speaking something private; they didn't let me in on it at all, Furey.

581 Q. The three of them?

A. The three of them. This fellow Morey was supposed to be the leader of a bunch of crooks; I don't know; but that is what Furey told me.

Q. What did he tell you? What did he tell you about Morey?

A. He is a big politician; he was the leader of crooks; a bunch of crooks and pay off men.

Q. What do you mean by "pay off men?"

A. Head paymaster I guess, of these hold ups.

Q. You mean the man that would go around and settle with the people that have been robbed?

A. No.

Q. What do you mean by "pay off man?"

A. I don't know what he meant by that; that is what he said; those are the exact words he told me.

Q. Well, did he mention any case?

A. No; he just mentioned the case where a woman was locked up, and she paid that Morey \$1,000 and—or rather, her husband was locked up, and she paid this Morey \$1,000 and got her husband out.

Q. Paid Morey \$1,000?

A. Yes.

Q. Paid Morey \$1,000?

A. Yes sir.

Q. What did Morey get out of him?

A. He got her husband out of jail.

562 Q. Was there anything wrong about that?

A. Not that I know of.

Q. Well, what did Furey tell you about Morey that was wrong?

A. Nothing that I can remember.

Q. What?

A. I can't remember of anything that was wrong.

Q. Was that the only time you ever saw Morey?

A. I never really saw him.

Q. You didn't see him in the room in the hotel at that time?

A. No; I didn't see him in the room. Morey was in the room, and he told me to go around the corner while Morey was there; because He didn't want me to see him.

Q. You did not know that Morey was there then?

A. Furey told me he was there; he called up a couple of times—he called Kean up a couple of times.

Q. Furey may have said it was Morey, and it may have been Jones or Smith; is that right?

A. That may be so.

Q. You could not testify that it was Morey?

A. No sir; I never saw him.

Q. Did you ever know this Binkowitz boy?

A. No sir.

Q. Did you ever meet Margaret Meeker?

A. No sir.

563 Q. Did you ever meet any lady with Nick Cohen?

A. No sir.

Q. Did you ever meet Mattie Pandolfe?

A. No sir.

Q. Or Joe Peppe?

A. No sir.

Q. Did you ever meet anyone with Goldberg & Heim?

A. No sir.

Q. Secor, Weil & Co.?

A. No sir.

Q. Did you ever meet anyone with Sullivan & Company, besides Sullivan?

A. Mike Drain—that is, after I was brought here though. I met Drain after I was brought here; the manager of Sullivan.

Q. Did you ever meet a lawyer named Burby?

A. That is Furey's lawyer?

Q. Yes.

A. I saw him; I never spoke to him.

Q. Do you know how he came to be retained by Furey?

A. No sir.

Q. Were you ever in Cleveland?

A. Yes sir.

Q. Did you tell us about that before?

A. Yes sir.

Q. When were you in Cleveland?

A. I was at a hotel, the Euclid Hotel.

Q. Did you ever meet anyone named Friedman?

A. Friedman? Oh, I know a boy up in the Bronx by the name of Friedman.

564 Q. What is his first name?

A. Hyman Friedman.

Q. What does he do?

A. I don't know what he is doing now. He lived up there where I lived.

Q. Well, is he all right?

A. Yes; positively.

Q. Did you ever meet the Gondorfs?

A. No sir.

Q. Did you ever meet an Englishman; a fine looking fellow; a smooth fellow, with very dark hair, with Nick Cohen or Arnstein?

A. I don't know; but I was up to 67 Exchange Place, to a firm there; I don't know whether it was Eric & Dreyfus, or some firm; I was up to some firm up there; brokers, 67 Exchange Place. I don't remember if it was with Nick Cohen, or somebody else.

Q. Who took you there?

A. And asked for a certain party, and he wasn't in, in 67 Exchange Place. It is on the same floor with the Eric & Dreyfus; there is only two firms there. I am not sure it was Nick Cohen, but I am pretty certain it was Nick Cohen.

Q. When was this?

A. That day that I was down to Pollak & Company and John Hogan.

Q. Can you fix the time?

A. No sir.

Q. The month? Can you fix the month?

A. October; the early part of October. I am pretty certain
565 it was Nick Cohen. He asked for a party, and the party was not in. A little brokerage house, it looked like—I don't know the name. There is two brokers up there in that firm. He had a desk there or something.

Q. Fuller & Company?

A. No.

Q. Charles E. Herrick & Company were at 67 Exchange Place; did you meet him?

A. I didn't meet the man. He asked for a party, but he was not in. I would not know the name. I am pretty certain that was with Nick Cohen I was up there.

Q. What were you going there for, do you know?

A. Nick Cohen went up there; I guess it was about those securities, to dispose of them. I guess it was about that; I am not certain; that is what he told me.

Q. Well, did you make any other such visits?

A. No sir. I am not certain that was Nick Cohen; I surmise it was Nick Cohen.

Q. Was it Newman & Company?

A. A small concern. No, I don't think it was them. Is that the full name of the firm?

Q. Yes; Paul A. Newman & Company.

A. No.

Q. Did you ever meet Herbert Weil? They are on the second or Third floor.

A. No.

566 Q. Was it up higher?

A. Yes sir.

Q. Was it Herbert Weil?

A. I don't know the name.

Q. Is it Posner's office?

A. I would not know, to tell you the truth; I would not know if you told me. I may say no, but it may be wrong. You can call up Eric & Dreyfus and find out who are on the same floor with them.

Q. You would not remember the name?

A. No sir; because nothing took place there; nothing important. I just went down there with somebody; I don't know just who it was, and the party wasn't in.

Q. Do you know Frank Brothers in the automobile business?

A. Frank Brothers? No sir.

Q. Do you know the Gotham Auto Exchange?

A. Yes sir.

Q. Is that where your car was sold?

A. I guess it was the Gotham.

Q. Eric & Dreyfus are 25 Broad Street. (Referring to telephone book.)

A. Ehrich & Company, rather; there are two Ehrichs. There is Eric & Dryfus, and then Ehrich & Company; E-r-i-c-h.

Q. Did you meet any women at all through Arnstein or Cohen or any of these men?

A. No sir.

Q. Well, do you know whether Arnstein had any women?

567 A. He spoke about a lot of women.

Q. Who did he speak about?

A. He didn't speak of anybody; just said he went around with a lot of women; that is all.

Q. What did Cohen say?

A. The same thing.

Q. Did Kean speak about women?

A. No; he just said his home—he said he lived in Perth I think it was.

Q. What did Haines say about women?

A. Nothing. I very seldom spoke to Haines.

Q. What did Furey say?

A. About women? Nothing. About his wife; that was all. His wife sends her regards up to me.

Q. Were you ever at Holland & Company, brokers?

A. No sir.

Q. Did you ever meet Jim Ryan?

A. No sir.

Q. Did you ever meet Frank McGee of Fuller & Company?

A. No sir. I have known of that firm; 67 Exchange Place; because when I worked down there, I went there one time. It is a small Curb house; that was what it was.

Q. Do you know anybody by the name of Benjamin Silver?

A. No sir.

Q. Or Curly Bennett?

A. No sir.

568 Q. Or Herman Landau?

A. No sir.

Q. Do you know Blanche Merrall?

A. No sir.

Q. Your brother-in-law's name is Krakow, K-r-a-k-o-w, isn't it?

A. Yes sir, Krakow.

Q. Your sister's name is Mildred?

A. Mildred.

Q. And you have a younger sister named Sadal, S-a-d-a-l?

A. Yes. She is married now, Mr. Myers.

Q. She is married too?

A. Yes; she got married last week.

Q. Was that a little bit of an office that you went into?

A. Yes; a small office.

Q. Did you meet a fat fellow there, a good, handsome man they called Dave?

A. I don't know. It was a small office on the left side as you get off the elevator; that is on the left side of the building.

Q. Did you ever visit any safe deposit boxes with Arnstein or Cohen?

A. Yes sir.

Q. Or otherwise; did you ever go to any safe deposit boxes at any time?

A. No box whatever.

Q. Or any banks?

A. Yes sir.

Q. Where?

A. I went with Nick Cohen to the Steneck Trust Co. in Hoboken.

Q. That is the only one?

569 A. As I told him about my having a vault in the Pacific Bank, they said—Nick Arnstein mentioned that if I ever met him there, don't say anything to him; don't speak to him there; because he had an account there.

Q. Did you ever hear them mention the name of Dave Lamar?

A. No.

Q. Did Furey ever mention the names of his brothers?

A. Yes.

Q. Joseph?

A. Harry.

Q. Did he tell you about Harry?

A. Yes sir.

Q. Did he tell you what Harry was?

A. Yes sir.

Q. What did he tell you?

A. He is a wire tapper.

Q. Did he tell you who Joseph is?

A. No sir.

Q. Didn't he tell you about Joseph?

A. I don't remember him saying.

Q. Alias George Ferguson?

A. No.

Q. Alias George Reynolds?

A. No sir.

Q. Did he tell you any of the aliases Harry Furey went under?

A. No sir. Furey spoke to me about it in Cleveland one time; that was all.

Q. What?

A. He spoke to me in Cleveland about—he spoke to me about Cleveland; how he took a fellow out of prison.

570 Q. Well, tell us what he said?

A. That is about all I can remember; in 1909 I guess he mentioned.

Q. Did he tell you how many times he had been in jail?

A. He said he shot up a place; that is all I know. That is what he told me. He told me he was in a shooting affair in Alaska too.

Q. We find that the people on the same floor with Enrich & Company at 67 Exchange Place are C. Herrick & Company, and Al. Blum. Is that the office you visited?

A. I don't know; it may be them. Here is one thing that I don't think is important, that Nick Cohen mentioned to me: That when he opened the account, he told me he bought 1,000 shares of Steel, over in Sullivan's office, when he opened the account there.

Q. Tell us about that. You say that Nick Cohen told you that he opened an account in Washington with Sullivan & Company; is that right?

A. Yes sir.

Q. Under the name of George Wall?

A. He didn't tell me the name; but he told me he opened an account, and just bought 1,000 shares of Steel. That is what he told me.

Q. That is last October?

A. Last October 14th.

571 Q. Do you know what date he told you that?

A. October 14th.

Q. He told you he bought it, the day he bought it; is that right?

A. Yes; that is what he told me.

Q. You were in Washington at the time?

A. I was in Washington at the time.

Q. I want to read to you some parts of Mr. Furey's testimony in this proceeding, and see whether you agree with his statement (reading):

"Just before he went to Montreal Joe Gluck said to me 'Ed, I have got something I want to talk to you about.' I said 'All right, Joe; come up to my room and talk to me.'

"Q. This was in New York?

"A. In New York, yes."

Did that take place?

A. No sir.

Q. "The same day that I sold the automobile for him."

A. No sir.

Q. "So he came up to my room and related to me how he was stealing those bonds." Is that right?

A. No sir.

Q. "How he was selling them."

A. He knew that before then.

Q. "How the young boy, his brother, was going down there and looking over the boys' shoulders and finding those bonds, and getting the names of the companies they belonged to, and telling him how he could take and go and bring them up." Did anything like that

take place?

572 A. Well, I would not say; I don't know. I guess that part is right.

By Mr. Dooling:

Q. In other words, telling the messenger boys who were making the deliveries, that he would deliver them for them?"

A. No sir.

Q. "A. Yes, that was it. After he did that he said to me 'They have been coming to me; I have a number of messenger boys.' And I said 'How many have you got?' He said 'I have got eight or nine. I know most all of them on the Street.'"

A. No sir.

Q. Nothing like that took place?

A. No sir.

Q. "And he said 'You can make a lot of money if you only have an outlet for those bonds.'"

A. No sir. He brought that up to me; he forced me to do that

Q "He told me of his connections, who he was selling them here to." Is that right?

A. What is that? I didn't understand that.

Q You told him who you were selling the bonds to here.

A Here? No; I told him about Mack and George; that is all.

Q Meaning Arnstein and Cohen?

A Yes; meaning Arnstein and Cohen.

Q You told him all that?

573 A. I didn't tell him everything; I just told him that was the parties I done business with.

Q "He did not say Sullivan & Company. He said Sullivan." Is that right? Did you mention Sullivan's name to Furey?

A. I said Sullivan & Company; I mentioned that to him.

Q "I am going to tell you just what he told me, and I know what I said. Also he told me about a George and a Mack." That is right, isn't it?

A. Yes, that is right.

Q "I asked him who George and Mack were. He said that is the only names he knew them by." Is that right?

A. That is right.

Q "I said 'Is that the only ones you have been doing business with?' He said 'No; I had a line in Baltimore I used to go and see.'"

A. A who?

Q. A line.

A. No sir.

Q "His name was Grosslin or Grossman.'" Did you ever mention any such name as Grosslin or Grossman?

A. No sir. I never told him I had any connection with Grossman.

Q This is his testimony: "He said," referring to you, "They have double crossed me. They have never agreed to give me what was coming to me."

574 A. I told him they did not agree to give me what was coming to me; something like that.

Q Referring to Arnstein and Cohen?

A. Yes sir.

Q "Q. They never had given him what they had agreed or promised him; that is what you mean, is it? A. Yes."

A. Yes sir.

Q "He told me then that he could get a lot of messengers down here, and get a lot of bonds."

A. No sir.

Q "And he wanted to know if I knew a place where to sell them."

A. No sir.

Q "I told him I did not."

A. Nothing like that; he is damn liar.

Q "What month was this, to the best of your recollection?"

A. That is January of this year, about the 27th of this January. The day I sold the car."

That is when he sold the car.

Q. "It was on a Monday. I think it was the last Monday in January." Is that right?

A. I don't remember.

Q. "It was the 26th of January; Monday. That was the same day that I sold the car. So we closed our conversation, and made an appointment for to-morrow; that is the 27th of January. Q. You appeared to be interested, didn't you? A. I did; I actually did; I was interested. Well, I thought it over that night.

575 Now in the meantime, as I said, I was thinking about them others down here—I had read about it." Did he tell you anything like that?

A. No sir.

Q. "I said 'Well, I have got a line'; and I commenced to think: 'Who will I get to co-operate with?' And I figured—that is why I read this stuff over that I told you about in there—knowing that I could not trust any policeman, because of my experience with them, I knew that I could not go to any policeman at all, or show any confidence in them or anything like that; which I know, if I had, I would not have been able—I was afraid that somebody would double cross me." Did he say anything like that?

A. Me?

Q. No; did he?

A. No sir; I never heard that before; this is the first time I heard it.

Q. Did you pay your own expenses to Canada?

A. Yes; and some of his.

Q. And some of his?

A. Yes; he owes me about \$70.

Q. Did Furey know under what name you were registered at the St. Lawrence Hall?

A. He gave me that name.

Q. He told you to use it?

A. He told me to use that name.

Q. Were you there when Furey telegraphed to Kean that
576 you were going up to Canada last January?

A. At where?

Q. He sent a telegram from 41st Street & Broadway to Kean. Do you remember that?

A. No sir; I don't remember anything like that.

Q. Now, this is what Furey testified: "Gluck was in his own room." This was in Canada, you see. "He could not walk hardly at all. So he went and laid down, and I took Jim into my room and I related the story to him, just the same as Gluck had related it to me. Well, Jim at first did not want nothing to do with it. He said no; he would not do that; he would not go down there. Well, I convinced him. Now I said 'These fellows—we have got to do something. This one here wants to know if he has got an outlet.'" Meaning you. "I said 'I have not got any, Jim; I don't know anything about it.' He said 'What excuse will we make?' Well, I said 'I will tell him that we can get some names

up there, bogus names, and we will make up a story among ourselves, that if we can get \$5,000,000 worth of bonds, we can dispose of them.' But we did not have anybody; that was just between ourselves." Did you ever hear that before?

A. No sir.

Q. Is that true?

577 A. I don't know; maybe; they may have had bogus names. I don't know those names. They gave me Fairbanks, and Bryant, Dunn something; Bryant D. something; or Bryant, Dunn; and Fairbanks. Those are the firms downstairs in the same building.

Q. Well, Furey's story is that he never intended to steal with you; that he and Kean were just putting up a job on you.

A. That is his story?

Q. Yes. Did you ever hear that before?

A. No.

Q. Well, do you believe that to be true?

A. Knowing what he does, certainly; he can do anything. You would not think for a moment I would ask him to go up to Canada, after he shook me down, do you? Do you think I would trust him for anything?

Q. Well, do you say that you were forced to go to Canada with him?

A. Positively. I didn't have no money—or, rather, it was almost the same as being forced; because if I didn't do it, I was afraid, because Adler and him were going to tell the Police anyway, after they took every penny off me; they were going to blackmail me. I would not be surprised if they would go to my people; which they did do. My father was crying the day they took me—my father never cried for nothing; I never saw him cry in his life only that time.

578 Q. Do you remember coming back from Canada and going to the Wallick Hotel?

A. The Claridge.

Q. Do you remember telling Furey after you came back from Canada, that Mack and George were back, and they wanted to do business with you again?

A. Yes sir.

Q. Now, Furey's story is that when he went down to the Woolworth Building he did not intend to have anything to do with stealing bonds, but that he went down to trick you.

A. I wasn't supposed to be down there at all. I was down there very seldom. I might go down for fifteen or twenty minutes, and come back. But he went down there and he would wait there for Murray Fox; and Murray Fox knows that for a fact himself.

Q. Well then, do you say that Furey had been down there every day for several days?

A. Yes sir.

Q. And Kean too?

A. Kean was down there one day, as far as I can recollect, wait-
for Murray Fox. I had no business to be down there at all.

Q. Well, can't you say how many days Furey was down there waiting for Murray Fox?

A. About three or four days; I guess it was three or four days.

Q. Every day, for several hours?

A. From nine in the morning—from ten in the morning until after closing time; three o'clock.

579 Q. Well, did Murray Fox ever actually give them any securities?

A. Not to my knowledge.

Q. Well, why didn't he?

A. I don't know. He was supposed to give it to them; I don't know why he didn't.

Q. Well, did Murray Fox actually ever do any stealing, to your knowledge?

A. Well, what he spoke of.

Q. What did he tell you?

A. He told me he stole a grip up in the Claridge Hotel one time, with something in it—I don't know; some jewelry or something I think it was. I don't know just what it was.

Q. Well, don't you know of any securities that he ever stole?

A. No sir.

Q. How did you come to entrust him with the stealing of securities?

A. Well, a party that I knew, went to the same doctor with me, spoke to him, and introduced me to him.

Q. Who was that?

A. I don't know his name.

Q. Oh, you must know his name.

A. Positively I do not know his name. He was at the same doctor, down to Dr. Rosenthal.

Q. Just because he introduced you to Fox, you entrusted Fox with stealing securities?

A. Yes sir.

Q. Don't you know whether Fox ever stole any?

580 A. No sir. I know he was going under a wrong name up there.

Q. Up where?

A. In the firm he was working for.

Q. What name did he go under?

A. Fox. I don't think that is his name.

Q. What is his name; Abrahams?

A. Abrahamson.

Q. Abrahamson?

A. That is his name.

Q. Do you believe that he is a crook?

A. From what he told me; that is what he told me.

Q. Is his picture in the Rogues' Gallery?

A. According to people, he is a hero; according to the papers; because he went down, on the first day I read the paper, it said he was a Wall Street hero; saved Wall Street \$5,000,000. I read that in the paper. He had a flower in his coat; he looked all dressed

Q. Do you believe that Fox had been stealing for several days, and turning the securities over to Furey?

A. I can't say to that; I don't know anything about that, if he had or not; I could not swear either way.

Q. Well, had anybody been stealing before you were arrested, during that week?

A. Anybody? No sir, not that I know of.

Q. Well, was Furey waiting for you to get better and come downtown?

A. No sir. He told me to stay uptown; those are the exact words he used: "Stay uptown." Kean and Furey said: "The best thing for you is not to come downtown at all." Furey and Kean said that.

Q. How did you happen to go downtown the day you were arrested?

A. The day I was arrested? I don't know; it was just my own fault; because I went down to Kean's room. Kean said Furey was not back yet. He said "You ought to go down and see him." I went down to Furey and saw Furey. And he told me he was going to get two loans off Murray Fox amounting to over \$400,000. I said "I am going to get something to eat." I took my brother—my brother was down there; I took my brother down and got something to eat; and we came back. And Furey said he had to go to the drug store to buy something. As he went in the drug store Murray Fox came along and told me to take some stock out of his pocket; which I done. And I told Furey about it. The next thing, the detective came over. That was all I know.

Q. Did you ever bring Murray Fox up and introduced him to Kean and Furey?

A. Yes sir.

Q. Up at the hotel?

A. Yes sir.

Q. How long before you were arrested did you do that?

A. About four days or so.

Q. Do you remember Murray Fox saying that he had robbed the Jewish Relief Drive?

A. No sir.

Q. How long did Furey know Adler before you met Adler?

A. I don't know.

Q. Did he know him before you did?

A. Adler?

Q. Did Furey know Adler before you did?

A. Oh, before I did? No; I knew Adler. But I don't know how long Furey knew him; I don't know that.

Q. How did Furey get acquainted with him, do you know that?

A. No sir. I met both of them down at the store, with the Count, when they shook me down.

Q. Do you know how long Kean knew Furey?

A. No. Furey told me he knew him a long while; that is all I know about it.

Q. Did Furey tell you how he became acquainted with Kean?

A. No sir. He just told me he did a lot of business with him; that is all; shook down people; both of them together.

Q. I would like to find out, if I can, when Furey first met Kean?

A. I don't know.

Q. What did Furey tell you about it?

A. He knew him. He knew him to be a fine fellow.

Q. You met Furey for the first time New Year's Eve?

583 A. New Year's Eve; yes, sir.

Q. You met Furey last New Year's Eve; is that right?

A. Yes sir.

Q. When you met Furey he told you that he knew Kean; isn't that so?

A. When I met Furey, the first day? No sir. He told me he was a detective; he came in as a detective the first day.

Q. When you did speak with Furey about Kean, did Furey tell you when he first met Kean?

A. No sir.

Q. Well, did he tell you under what circumstances he met him?

A. He didn't tell me how he met him; but he told me what he was doing with him.

Q. Well, did he tell you what he was doing?

A. Yes.

Q. What was he doing?

A. Shake down game with Kean. Kean, he said, was in the Secret Service—he used to be in the Secret Service in Canada.

Q. Did he tell you what he and Kean were doing in the shake down business?

A. I understood they were working on a boat that was sunk; they were trying to shake down some people down at No. 1 Broadway, for some money; they were getting 100 and some odd thousand dollars for some insurance on a boat.

Q. Well, did he tell you what else?

584 A. No sir; not that I know of.

Q. Well, did Kean ever tell you what transactions he had with Furey?

A. The same.

Q. Did Furey ever tell you whether he knew Cohen or Arnstein?

A. No sir.

Q. What other names did Furey ever mention to you besides Kean and Haines?

A. Eddie Mines.

Q. And Eddie Mines; and his brother.

A. And Harry Furey; and Morey; and there was some people he mentioned to me up in Rector's there; I don't know who it was.

Q. Well, did he tell you what his relations were with John J. Morey?

A. No sir.

Q. Did he tell you what business deals he had with him?

A. He didn't tell me what they were.

Q. Well, did he say whether Morey was in the Connolly case?

A. No sir.

Q. Did he ever tell you anything about the Connolly case?

A. No sir.

Q. Did Kean?

A. No sir.

Q. Or Haines?

A. No sir.

Q. Do you believe, from your association with these men, that securities have been disposed of in Canada?

A. By these people? Not to my knowledge; no sir.

585 Q. Do you believe that any have been disposed of in Toronto?

A. No sir.

Q. Or Hamilton?

A. No sir.

Q. Or Montreal?

A. No sir.

Q. Well, in your opinion where are all the securities which you did not give to Cohen and Arnstein and The Count and Wolf? Where are all the other securities?

A. I can't say. I guess some—from what I understood, from my idea is a lot of them were destroyed. Not ones that I ever had; that some other boys had. They took a lot of them from down in Wall Street.

Q. Well, do you know who destroyed them?

A. No sir; I don't know who has got them.

Q. Or where they were destroyed?

A. I don't know who has got them; some boys. A couple of them mentioned, and told me about some fellow having—I forget how many hundred thousand dollars worth of securities, and he burned them; he tore them up, you know.

Q. Well, do you know who did that?

A. No sir.

Q. Do you know who the boys are?

A. No sir.

Q. Well, how can we trace them?

A. No way that I know of. Well, I know the boy that told me about it, but I don't think he will admit it; that is all.

586 Q. Tell me his name.

A. Fritz; that is the one that you have got down there.

586 Q. Tell me his name.

I will get the full name for you the next time.

Q. Well, do you think he knows who destroyed them?

A. He said he does; I don't know. I know it was mentioned by another party who didn't know Fritz, about the same thing: Some few hundred thousand dollars' worth of securities being destroyed.

Q. Who was that other boy?

A. I don't know who it is.

Q. Do you know what securities they were?

A. No sir. Kean told me—

Q. (Interrupting.) When?

A. Up in Canada, in Montreal, last January, Kean told me that

Mr. Bryant told him there was quite a few ways of disposing of stolen securities. One way was to open a little office, just a small office, and take the stolen securities and buy sugar—or rather, flour concern, or something, and leave them there as security, and buy sugar or flour, whatever it is; and sell the sugar, and then put up the securities, and take back your securities, so that they would not know it was stolen securities. And on the next trip to take just
 587 about three or four times as many, and borrow three or four times as much, and sell your sugar——

Q. That is what Kean told you?

A. Yes. And another way——

Q. (Interrupting.) This is what Kean was telling you?

A. Yes sir.

Q. That Bryant told him?

A. Yes sir.

Q. Go ahead.

A. He also told me another way to do was to open a small office, and to give the stock to Bryant, who would deposit it with some kind of a boat concern and buy a boat say for \$300,000, leaving the stolen stock as security; and to send the boat across with a cargo; and the cargo, making one trip, would pay as much as the boat cost—almost as much as the boat cost, the cargo alone; the profits of the cargo. He said then, when you got your money for the cargo, to go up to the broker and pay him back the money for the security and get back your securities. And the next time get three or four boats running, and get the cargo, and get your money for the cargo, and leave the boats go; let them pick up the boats; but you have got your money. That is what Kean told me Bryant told him, a few ways of getting rid of, and disposing of stocks. And he said you would have to give Bryant time, because he had to get

588 in connection with the people in towns around here in the United States; you have got to get in connection with brokers.

Q. Did he ever mention the name of any paper manufacturers?

A. Paper? No sir.

Q. Did he ever mention the name of any wealthy man up there, a manufacturer, a business man?

A. Oh, he mentioned to me about—he spoke of his brother-in-law who works in a bank—the Bank of Nova Scotia, about this here. And his brother-in-law, or brother or brother-in-law, told him that banks would only loan about \$30,000 on securities; that you could not loan any more; because they were short of money up there; most of the money is going to the manufacturers, and the banks would not loan brokers any more.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

Adjourned sine die.

589 The Commissioner: On what ground?

Mr. Simpson: As incompetent. I object to his examining my client, Harry Wolf, in the presence of this other man.

Mr. Myers: This is not General Sessions, Mr. Simpson.

Mr. Simpson: I understand that. I do not know what the purport or the purpose of it is.

Mr. Myers: I will tell you the purport——

Mr. Simpson (interrupting): All right; go right along; do as you like.

JOSEPH GLUCK recalled.

Examined by Mr. Myers:

Q. Mr. Gluck, will you please state what securities you gave to Harry Wolf?

A. Yes sir.

Q. First, before you do that, is this the Harry Wolf to whom you gave the securities (indicating Harry Wolf)?

A. Yes sir.

Q. Will you please state what securities you gave to him, and where, and when?

A. Yes. A 1,000 dollar Bethlehem Steel bond. 500 dollar City Service bond. 100 shares of Bethlehem Steel, series B. 2 or 3 Missouri Pacific bonds. A 100 dollar Sherwin & Williams bond. 3 United Kingdom of Great Britain bonds. 2 Wilson bonds. 5 Pennsylvania Railroad bonds. 5 Interborough-Metropolitan bonds. 1 Third Avenue bond. I can't remember all the names; I want to have the paper in front of me.

Q. Do you want the list of securities? Did you give him any Iowa Central Railroad bonds?

A. Iowa Central, yes sir.

Q. How many?

A. 2 of them. Great Northern.

Q. Did you give him any Great Northern Railroad?

A. Yes sir; one bond.

Q. Did you give him any Third Avenue Railroad?

A. You have that; one bond.

Q. Did you give him any U. S. Rubber?

A. Yes sir; one bond.

Q. How many?

A. One bond.

Q. Did you give him any Wilson bonds?

A. You have 2 of them there.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

JOSEPH GLUCK recalled.

Examined by Mr. Myers:

Q. Will you please state where you gave those securities to Harry Wolf?

A. I gave them up in the store, most of them.

- Q. State where; what store; where is it?
A. His father's store; on Webster Avenue & Prospect Avenue.
Q. Well, has it a number?
A. I don't know the number of the store.
Q. Is that in the Bronx?
A. Yes sir.
Q. 831?
A. Yes sir.
Q. 831 Westchester Avenue; is that right?
A. Yes sir.
Q. When was that?
A. At different times.
Q. When was the first time?
A. Well, the first bond I gave to Rudie Bunora to give to him.
Q. Well, the first bond that you gave directly to Harry Wolf, when was that?
A. June I guess.
Q. What year?
A. 1919.
Q. What month?
A. Around June or May.
Q. May or June 1919?
A. Yes sir.
Q. Can you fix the date any more definitely than that?
A. It is hard to, now.
- 592 Q. How?
A. It is hard to remember, now.
Q. Well, some time in May or June?
A. Yes sir.
Q. Can't you say what the first transaction was?
A. 3 United Kingdom bonds.
Q. How do you recall that? How has that fastened itself in your memory?
A. I can't remember.
Q. How do you just come to recall the 3 United Kingdom bonds?
A. Because they were the first bonds I gave him.
Q. After you gave him the Liberty Bond, through Bunora?
A. No Liberty Bond. I gave one bond to Bunora.
Q. What was that?
A. I think it is Missouri Pacific.
Q. Well, the first bond you gave to Bunora?
A. Yes sir.
Q. Missouri Pacific bond?
A. Yes sir.
Q. And then you had your dealings directly with Harry Wolf?
A. Yes sir.
Q. The first dealing you had with him consisted of the delivery of 3 bonds of the United Kingdom of Great Britain & Ireland; is that right?
A. Yes sir.
Q. That was in your father's store?

A. No sir.

Q. Where was it?

A. In his father's store.

Q. At that address you just gave us: Westchester Avenue, 593 831?

A. Yes sir.

Q. Can you say what time of day?

A. I cannot.

Q. Who was present?

A. There was nobody present at the time—some people in the store; but there was nobody else present. They didn't see me give it to him.

Q. Was it in the store, or outside?

A. In the store.

Q. Who was in the store besides Harry Wolf?

A. Some girl working there; I don't know.

Q. Was his brother there, Wolf's brother?

A. No sir.

Q. Or his father?

A. No sir.

Q. Any member of his family?

A. Not at that time.

Q. What were the circumstances? How did you come to give those securities to him at that time? How was the meeting arranged?

A. Well, I was up there at the time Rudie Bunora gave him the first bond; I went up there and I saw we got \$300 for the bond; and I went up there and gave him some other bonds.

Q. Let us go back then to the Missouri Pacific bond. Was that the first transaction you had with Bunora or Wolf?

A. Yes sir.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

594 JOSEPH GLUCK recalled.

Examined by Mr. Myers:

Q. Now, tell the Court everything about your first meeting with Bunora?

A. Well, I knew Bunora about five years; he used to live around my neighborhood. I told him I had a bond, which I found, and asked him if he could dispose of it. He said he had a friend that might be able to; and he took me up to his friend, Harry Wolf.

Q. Where was this conversation with Bunora?

A. I think it was downtown somewhere.

Q. Well, where?

A. I think it was on Exchange Place.

Q. Can you say where on Exchange Place; what number?

A. Exchange Place & Broad Street.

Q. Exchange Place & Broad Street. Now, can you state the month and year? What year was it?

A. 1919.

Q. Can you state the month?

A. It must have been about May.

Q. When did you get out of the Army?

A. In March.

Q. How soon after you got out of the Army was it?

A. About a month—I guess it must have been in April then.

Q. Some time in April last year?

A. Yes sir.

Q. What were the circumstances of your meeting with
595 Bunora?

A. I told him I had a found bond, and asked him if he could dispose of it. He said he had a friend uptown that he would take it to. He went uptown with me, and up to Harry Wolf's store. I waited outside. He came back and told me that he spoke to Harry Wolf, and he was to give him 50 per cent of what the bond was worth; if we would leave the bond there; whether I was willing. I said yes.

Q. This was the talk you had with Bunora?

A. Yes sir.

Q. Outside of Harry Wolf's store?

A. Yes sir.

Q. Or the store of Harry Wolf's father?

A. Yes sir.

Q. Yes?

A. And he told me that we would get 50 per cent of the bond. And we came back the next day, and I waited outside of the store, and Rudie had \$300.

Q. Who did?

A. Rudolph Bunora received \$300 for the bond.

Q. Where did he get the \$300?

A. From Harry Wolf.

Q. How do you know that?

A. He went into the store.

Q. You watched him go in the store?

A. Yes sir.

Q. You watched him talk with Harry Wolf?

A. Yes sir.

Q. Then you saw him come out with \$300?

A. Yes sir.

Q. You saw the \$300 on the person of Bunora?
596

A. Yes sir.

Q. Is that right?

A. Yes sir.

Q. Did you see the money pass from Harry Wolf to Bunora?

A. No sir.

Q. Well, how do you know that Bunora got the money from Harry Wolf?

A. Later on, when I went up to do business with Harry Wolf, he

really told me he gave Rudolph Bunora—that he sold him that bond.

Q. That was the first bond. How much was that worth, that Missouri Pacific bond?

A. I really don't know.

Q. How much did you sell it for?

A. Well, it was a little less than 50 per cent.

Q. How much did Harry Wolf pay for it?

A. \$300.

Q. And it was worth a little more than twice that?

A. Yes sir.

Q. What became of the \$300?

A. \$100 went to my brother.

Q. Irving?

A. Irving. \$100 to Rudolph Bunora; and 100 to myself.

Q. You say that you know that this witness, Harry Wolf, paid \$300 for that bond, because he told you so?

A. Yes sir.

597 Q. When did he tell you so?

A. When I came around to do business with him again.

Q. How soon after the Missouri Pacific transaction?

A. A day or two.

Q. What was the next transaction? What did you say to Harry Wolf and what did he say to you?

A. The same conditions; I would do business with him; to give me 50 per cent of the bonds, of what they were worth.

Q. Well, tell us; state the entire conversation. You went up to see Harry Wolf and had a talk with him?

A. Had a talk with him.

Q. What did you say to him?

A. I told him I had some bonds; some more of them other bonds; bonds belonging to me.

Q. Well, did you tell him that that Missouri Pacific bond had been stolen?

A. Why yes sir; I told him that.

Q. Now, go on.

A. And I told him I had some more bonds; and I could make the same—if he could give me 50 per cent for them. He said "Yes." And I left him the bonds.

Q. What bonds?

A. The first ones I can remember are the 3 United Kingdom bonds.

Q. Did you get any money for those?

A. No sir.

598 Q. Did you get any money from Harry Wolf at any time afterwards?

A. No sir.

Q. And yet you gave him all those securities?

A. Yes sir.

Q. How was it you did not get any money from him?

A. Well, he held me up on it. He said "The party is out of town."

Q. What party?

A. The man he had to dispose of the stock.

Q. Did he give you any name?

A. No sir.

Q. How often did you see him after the Missouri Pacific transaction?

A. Well, I saw him the first two or three weeks, every day.

Q. And he kept stringing you along?

A. Yes sir.

Q. And you kept feeding him securities?

A. Yes sir.

Q. He always said that he would square up with you?

A. Yes sir. I then went up to Rudolph Bunora, and I just told him then that the bond I gave him was a stolen bond; it was not a found bond. And I told him I was giving Harry Wolf some more bonds, which I didn't receive any money on. I said "You know Harry Wolf better than I do. You go down and talk to him." So

599 I went down with him to speak to Harry Wolf. Harry Wolf claimed that somehow or other the bonds were given to somebody else and he never got any money for them. And we never did get a nickel from him.

Q. Were all those securities about which you have testified, handed by you to Harry Wolf directly?

A. Yes sir.

Q. Except the Missouri Pacific bond?

A. Oh, there was three bonds there, that there was somebody else; there was some other bonds; I don't know who it was.

Q. What is that? I don't follow that.

A. There was three other bonds of them there, that were handed to another boy to give to Harry Wolf.

Q. By what boy?

A. I don't know; his name is Fitz.

Q. Fitz what?

A. Fitz Roy.

Q. How do you spell that?

A. F-i-t-z-R-o-y.

Q. Is that his last name?

A. Yes sir.

Q. What is his first name?

A. Alfred.

Q. Alfred Fitzroy?

A. Yes sir.

Q. Where is he now?

A. I don't know, sir.

Q. Where does he live?

A. I don't know, sir.

Q. What bonds did FitzRoy give to Wolf?

A. I don't know. There is a couple of them bonds; I don't know just which.

JOSEPH GLUCK recalled.

Examined by Mr. Myers:

Q. This Alfred FitzRoy, is that the boy whom you called Fritz?

A. Yes sir.

Q. How?

A. Yes sir.

Q. Now, did you hand all those securities, except the two or three that you say that FitzRoy handed to Wolf, did you hand all the others to Wolf yourself?

A. Yes sir.

Q. Where?

A. Uptown.

Q. Always in his father's store?

A. Yes sir. Up in his father's store all the time, yes sir.

Q. Always in his father's store?

A. Yes sir.

Q. You are sure about that now?

A. Yes sir.

Q. Was anyone else present at any of those times?

A. There was some people in the store, but they never saw me give him bonds. We were in the back.

Q. Did you ever take anyone with you?

A. My brother used to wait outside.

Q. How?

A. My brother was outside once or twice. He never did speak to Harry Wolf.

Q. Your brother watched you hand those securities over to Wolf?

A. Yes sir.

601 Q. That is Irving?

A. Yes sir.

Q. Now, suppose you were called upon to prove to the satisfaction of the Court, that you turned all those securities over to Harry Wolf; how would you do it?

Mr. Simpson: I object.

The Commissioner: Don't want any guessing, or surmise.

Mr. Myers: What is the ruling, sir?

The Commissioner: Objection sustained.

Q. Well, what evidence have you got that you turned those securities over to Wolf?

A. Why, I told Rudolph Bunora to go down there; I took him down there, and he talked to Harry Wolf about the bonds; and he admitted getting the bonds off me, to Rudolph Bunora.

Q. That was in your presence?

A. In my presence, and in FitzRoy's presence.

Q. In your presence and FitzRoy's presence?

A. Yes sir.

Q. Were you all together, the four of you?

Yes sir.

Q. Bunora, FitzRoy, you and Harry Wolf?

A. Yes sir.

Q. Is that right?

A. Yes sir.

Q. And you talked to him about his not squaring up with
602 you?

A. Yes sir.

Q. Now, tell the Court the whole conversation.

A. Well, Rudolph Bunora knew him better than I did; I let him do most of the talking.

Q. What did he say?

A. He said that "There is no reason why you should not give him the money for the bonds. I don't believe there is any hold up in any way." And Wolf said "Well, I gave them to somebody, and I can't get the bonds back just now." And he was stringing him along like that, the same as he did to me.

Q. What did Bunora say about it?

A. Well, he told me he didn't believe it.

Q. What did he say to Wolf about it, in your presence?

A. Well, he told him—what he told him in my presence?

Q. Yes; what did you hear Bunora say to him? Did Bunora say "You are lying about it?"

A. Oh yes sir. He said "I don't believe that is true."

Q. What did Wolf say then?

A. He said "It is. I gave it to——" he mentioned some name that he gave some bonds to.

Q. What names did he mention?

A. I think Rudolph Bunora knows that better than I do.

603

JOSEPH GLUCK recalled.

Examined by Mr. Myers:

Q. Do you recall that meeting of the four of you?

A. Yes sir.

Q. Will you please state where it was?

A. On Longfellow Avenue.

Mr. Bunora: Longwood Avenue.

The Witness: Longwood Avenue.

Q. Where was that?

A. Between Prospect Avenue and somewhere.

Q. What kind of a place?

A. In the street; on Longwood Avenue.

Q. Who were the four persons present?

A. Rudolph Bunora, Harry Wolf, and Alfred FitzRoy.

Q. Can you state what took place?

A. Yes sir.

Q. State it.

A. Well, I told Rudolph Bunora to go over to him about those bonds. He went over and told him about the bonds. And he said

it was not right to do me out of those bonds; to give me the money back. He told Rudolph Bunora that he gave them to somebody, and he was done out of the money himself. Rudolph Bunoro said he didn't believe it. That is about all that I can remember.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

604 JOSEPH GLUCK recalled.

Examined by Mr. Myers:

Q. Can you recall, Mr. Gluck, how many times you asked Wolf for the money for those bonds?

A. For about a week or two; every day for about a week or two.

Q. And did he tell you who took the bonds from him; who had them?

A. Well, he told me that he gave some to some fellow.

Q. Who; did he give you the name?

A. Buck Connell.

Q. Any other names?

A. McCollough.

Q. After that did you have a talk with Buck Connell about the matter?

A. No sir.

Q. Never?

A. No sir.

Q. Or with McCollough?

A. No sir.

Q. Well, didn't you try to verify Wolf's statements?

A. No sir; because I didn't believe they were true.

Q. You thought he was holding on to all of them?

A. I thought he got the money for it, but he didn't give me any of it; that is all.

Q. Do you know where he has disposed of them?

A. No sir.

Q. Have you any information on the subject?

A. No sir.

Q. Did you ever hear where he disposed of them?

605 A. No sir.

Q. Do you know through what sources he was dealing?

A. No sir.

Q. Don't you know how he got rid of the Liberty Bond?

A. I don't know anything about a Liberty Bond.

Q. What?

A. I don't know anything about a Liberty Bond; I never handled any Liberty Bonds.

Q. Or the Missouri Pacific bond?

A. Well, I know Rudolph Bunora gave it to him, and he got money from him; that is all I know about that part.

Q. Don't you know how he disposed of it?

A. No sir.

Q. Through what source?

A. No sir.

Q. Well, didn't you ever ask him?

A. No sir.

Q. Did you ever ask Fitz?

A. No sir.

Q. Did you ever discuss with Fitz at all the securities which you had given to Wolf?

A. Why yes; I discussed that with him. I asked him what about the bonds, after I didn't get any money for them.

Q. You asked who?

A. Fitz Roy.

Q. How did you come to ask Fitz Roy, when you gave the securities to Wolf?

A. Because I know Fitz Roy and Wolf are in on those bonds.

Q. How do you know that?

A. I was told by Harry Wolf, if I met Fitz Roy downtown,
606 it is all right to give him the bonds.

Q. Then you gave some bonds to Fitz Roy?

A. Yes sir.

Q. At the request of Wolf?

A. Yes sir.

Q. Then some of those bonds that you have testified to, you gave to Fitz Roy?

A. Yes sir.

Q. At the request of Wolf?

A. Yes sir.

Q. Where did you give them to Fitz Roy?

A. Down in Broad Street & Exchange Place.

Q. What did Wolf tell you about his relations with Fitz Roy?

A. That he was his partner.

Q. In all of these transactions?

A. Yes sir.

Q. When did you first tell Wolf that those were stolen securities?

A. The first time I dealt with him.

Q. And he knew from the very beginning?

A. Yes sir.

Q. And did you tell him about the securities that you were giving to Fitz Roy; that they were stolen?

A. Yes sir.

Q. Did you tell Fitz Roy that?

A. Yes sir.

Q. Why didn't you ask Fitz Roy for the money, when you could not get it from Wolf?

A. I asked Fitz Roy also.

Q. What did he say?

A. The same story.

Q. What story?

A. That they gave the bonds to somebody, and they could not get the money for them.

607 Q. Didn't they mention the somebody?
A. Well, they told me some of the bonds went to Buck Connell and McCollough.

Q. Well then, why didn't you go to Buck Connell and McCollough and try and get the money?

A. It was not my place to go there; I was waiting for them to go there.

Q. But they didn't go?

A. I gave the bonds to Harry Wolf, and I expected to receive the money from Harry Wolf; because I kind of thought that he didn't give the bonds to those boys. I still think he did not; he was——

Q. (Interrupting.) Didn't you make any efforts to find out through what channels Fitz and Harry Wolf were disposing of those securities?

A. Yes sir.

Q. Well, have you any information now as to where the securities are?

A. No sir.

Q. Did you ever have any information after you gave them to Harry Wolf and Fitz?

A. Only the information they gave me: Buck Connell and McCollough.

Q. Did you ever have any correspondence about it?

A. No sir.

Q. Or any telephone talks?

A. Yes sir.

Q. How many telephone talks did you have about it?

608 A. Four or five.

Q. Where did you phone from?

A. Different places on the outside.

Q. Downtown?

A. No sir; in the Bronx.

Q. To where?

A. To Wolf's store.

Q. Did you always speak to Harry Wolf?

A. Yes; if he was in.

Q. He always kept giving you the same answer?

A. Yes sir.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

Adjourned sine die.

609 JOSEPH GLUCK recalled.

Examined by Mr. Dooling:

Q. Now Joe, set him straight here on another matter.

A. He said, when he went into the broker's office, he said Bryant said "What is this; a trap for me, Kean? Because I don't want to

get in Dutch here. If you need money, I will give you money." He said "Tell me, is it a trap?"

Q. That is what Bryant told him?

A. That is what Kean told me that Bryant said to him.

Mr. Furey: Were you present when he said that?

Mr. Kean: Bryant never said that to me. That was a story that I took to him.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

610 JOSEPH GLUCK, recalled.

Examined by Mr. Myers:

Q. How many days was Mr. Kean in town, at the Claridge, Mr. Gluck, before you were arrested?

A. Almost a week, sir.

Q. Was he downtown with you and Furey in the Woolworth Building?

A. Yes sir.

Q. For how many days?

A. Quite a few days.

Q. You were expected to steal during that week?

A. No sir.

Q. Was Murray Fox expected to steal?

A. Yes sir. We were supposed to—Furey was supposed to be there at the time.

Q. Was Murray Fox put in direct touch with Kean?

A. Yes sir.

Q. By whom?

A. By Furey. I introduced Murray Fox to Kean and Furey.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

611 JOSEPH GLUCK recalled.

Mr. J. Gluck: I will tell my story—I can't tell it so good as he can. Before I start out: Was it only two days you was down in Wall Street?

Mr. Furey: Positively.

By Mr. Dooling:

Q. Now take your time.

A. I have known Adler for some time. I was introduced to him by a fellow by the name of Chubby; I don't know his other name.

Q. Chubby is a messenger down in Wall Street?

A. He is a messenger down in Wall Street, Chubby. I met him on Broadway; he didn't have nothing to eat, and I took him into a restaurant and I got him something to eat. Later on his wife's mother was sick in St. Louis, and he didn't have no money, and he wanted—he had some furniture he wanted to sell. I said "Don't do that. Here is \$100. Give it to your wife to go to St. Louis." I saw her off on the train. I was pretty good friends with him. I even invited him up to my sister's wedding, and hired a full dress suit for him.

By Mr. Myers:

Q. When was that?

A. That was about December.

Q. Last December?

612 A. Yes sir. I took pity on him; he didn't have nothing to eat; I paid his room rent for some time. I took him to my house to sleep; he slept up there a couple of days. One day he came down to my store—my father's store, and he said he left his hat there. I said "Yes; here is your hat." And he leaned against the counter. He was leaning against the counter and I was working at that time in my father's store; I was sweeping out the store at the time.

Q. That was 50th Street & Second Avenue?

A. 50th Street & Second Avenue, my father's store. He said: "Do you want to go out?" I said "No; I am busy now." I didn't think much of him, because he was telling some of my friends to try to rob me—you know, to make me spend money on him.

By Mr. Dooling:

Q. You had a lot of money at that time?

A. I had some money at that time. One man's name was Louis Dorfman, who he told——

By Mr. Myers, interrupting:

Q. D-o-r-f-m-a-n?

A. Yes sir.

Q. A lawyer?

A. No sir. His brother is a news reporter on the New York American. I didn't like him then, but I didn't care to tell him to get out of the store. And he stood there leaning against the counter like that. And The Count, as I know later, and Furey comes
613 in—The Count and Furey came in the store. I was sweeping out. He said "Hello Josey, old boy."

By Mr. Myers:

Q. Who said that; Furey or The Count?

A. Furey and The Count both—The Count did say that himself at that time; he did mention that himself. And The Count said

"Come on along." I said "What are you talking about?" He said "That's what." And he flashed a badge.

By Mr. Dooling:

Q. It looked like a Police shield, didn't it?

A. Yes. I didn't take a good look at it.

Q. You thought he was a detective; is that right?

A. Yes sir.

Q. Then what happened?

A. Furey goes over—Adler was leaning up against one of the boards on the counter there. And he said "Wasn't you up before?" Adler said "No." Furey said "What is your name?" Adler gave him some wrong name; I don't know what it was. He took off his hat and he said "Don't tell me that; come on along. You were up. Come on along with me." My father said "What's the trouble?" He said "You will find out"—The Count said "You will find out. Come up to the District Attorney's Office at 3 o'clock." I said "It's all right, father." I told my father it's all right; 614 he don't have to worry. We went out of the store, and they hired a cab. They were going through the Park at that time. I said "What's the idea of going through the Park?" He said "We are going to take you uptown." First Adler was saying to me all the time, he said "Don't let's go down to the District Attorney's Office." He said they had something on him; they will beat him up. I knew that Adler was arrested before; I didn't know what they will do in the District Attorney's Office, or up in the Police Station. So Adler was telling me—I knew Adler had been. He told me, he said "They will beat me up down there. Don't go down there." The Count said "You look like a pretty good fellow; but we have got you now with the goods. We know where you have been sleeping. We know you were over in Hoboken and met a party. And you were sleeping up at the De Paris Hotel."

By Mr. Myers:

Q. You say that is the first time you met Furey?

A. Yes sir.

Q. The first time you had ever seen him?

A. The first time I had ever seen him or The Count. Never knew any of them, only Adler. We were going through the Park, and Adler suggested to The Count and Furey that we stop off some place.

615 By Mr. Dooling:

Q. He wanted to straighten it out, did he?

A. Yes sir. I said "What's the idea?" He said "Listen, Joe"—first he said "Can I talk to this fellow in Jewish?" To The Count and Furey. And The Count and Furey said "No objection; sure you can talk to him." And by the way, Furey said he was the one that beat him up one time down there in the jail, down in Hook-
quarters—

By Mr. Myers, interrupting:

Q. Wait a minute. Furey said what?

A. That he had beat up Adler one time.

Q. He was one of the detectives?

A. Yes sir. And Adler said "I remember you all right; I can feel it yet."

Q. Now, what happened then? Did he speak to you in Jewish?

A. Yes, he did. I told him to speak in English; I can't very well understand Jewish. He said "Well, listen: We will drop off here; we can do business with these fellows." I said "What for?" He said "If we go down there, we will get in a lot of trouble." He said "Your people?"—I said "My people, yes, that is right." Then Furey said "That is right; think of your people, Joe." Well, anyway, we stopped off in that restaurant up on St. Nicholas Avenue & 110th Street. And we sat down there, and The Count excused himself; he said "I have got to call up the District Attorney."

And he went over to the phone booth and called up somebody I guess.

Q. You don't know he called up?

A. I don't know if he did call up anybody; but I know he went to the phone booth and took up the receiver. And he came back, and Adler said to The Count, "Now listen; let's get down to business. I will give you \$1,000 if you will let me out of this." The Count said "A man in my position can't do that." Furey walks around the restaurant and just laughed. He said "What do you think we are?" And then Adler excused himself for a minute, and told me to come over and speak to him alone. He said "Come on, Joe, we can do business with them." I said "Just a minute; let me call up my father." My father didn't know what happened; he never knew what business I was doing. I always told him I was in the oil business. I called up my father, and got my father on the phone. My father was crying, and I felt bad then, and I would do anything. So I said "Listen: I have got \$2,000 in the bank. You can have that." He said "No; that would not satisfy me. I would not lose my reputation for that." I wanted to give him everything. I said "Here; I have got a ring; I have got a car; you can take them also." They said "Where is it?" I said "I will take you there"—I said "How do I know you are going to keep your word?" Furey said "I will keep my word; you don't need to be afraid of that. I wouldn't double cross you." We went out—I paid the check; I had a cup of coffee and some sandwiches. We went uptown; I told him the car was up in a garage on one hundred and sixty—I can't remember the street.

Mr. Furey: 179th Street, the Bronx.

Mr. J. Gluck: It is not 179th Street; it is down below Tremont Avenue. 169th Street & Third Avenue; the Bronx Auto & Taxicab Co.

By Mr. Dooling:

Q. On the East Side, backing up on the rocks, isn't it.

A. Yes sir; that is the place. We went up there, and he looked at the car; and I told the owner of the place there that this was the new owner of the car—oh, by the way, before we went there I went up to 172nd Street, to the bank—I had \$2,000 in the bank there; the Corn Exchange Bank on Tremont Avenue. I drew out the \$2,000 that I had, and I closed the account. I still had the money in my pocket. We went down to a Notary Public to make out a bill of sale.

Q. Of the car?

A. Of the car. But Furey didn't want to give no name in the bill of sale.

Q. And it was left blank?

A. It was left blank. But the Notary Public refused to
618 make out the bill of sale that way, without a name in the bill of sale. He said "All right, we will go somewheres else."

Q. Who said that; Furey?

A. Furey. When we went outside, The Count said "We will remember this fellow; we will attend to him." And we went down to another Notary Public, between Tremont Avenue and the garage; I don't know just where it is; what street it is on. And there was a girl there working in there; and she made out the bill of sale in blank, no name in it. I signed the bill of sale. We then went down to the garage and I told the boss over there that this is the man—I didn't know his name at that time; I didn't mention no name. I said this man was the new owner of the car. He said "All right." I said "He will pay for the repairs." That was satisfactory. And Furey talked to him a little while; I was on the side; he told him some different name; it was not Furey what he mentioned at first; I know that. And he told him that he was the new owner of the car; he wants the car fixed up, and how soon it will be ready. And he said it would not be ready for about a week; and it would cost a couple of hundred dollars to fix up. And I went
out of there, and I turned over the ring and the \$2,000, over
619 to The Count. I told him I didn't have any money—

By Mr. Myers, interrupting:

Q. In Furey's presence?

A. In Furey's presence and Adler's presence.

Q. Who did you give the ring to?

A. To The Count; and the money I also gave to The Count. The bill of sale for the automobile went to Furey.

Q. That was about an even split, wasn't it? The car was worth about \$3,700; and the ring about \$1,700, and cash, \$2,000?

A. Yes sir; but he gave me back \$250. I told him I didn't have any money.

Q. Who is "he"?

A. The Count. He gave me back \$250, because I told him I didn't have any money. He said "I don't want to leave you busted."

He said "Here is \$250 out of this \$2,000." Then Furey made an excuse that he had to go downtown with Adler to get the money out of Adler. He said "I wouldn't let him get away with that." Well, they left, leaving me with The Count.

Q. And you supposed that they were going down to shake Adler and his relatives down for something?

A. Positively; no other reason.

Q. And all this time Adler was in with Furey?

A. Yes sir. I found that out later. I didn't know at that time.

620 Q. Because you were fooled and deceived?

A. Yes sir. While The Count was walking along with me on the street, he said "Listen, Joe: I would like to know if you have got any more of those stocks." I said I didn't have any more.

Q. Where did The Count learn that you had any securities?

Mr. Dooling: Did he tell you that?

A. I found out later.

By Mr. Dooling:

Q. Did he tell you?

A. Did he tell me?

Q. Yes.

A. He did not tell me how—he told me there was a lot of trouble down at the District Attorney—he said "They are going to hang you. We have got witnesses down there; all kinds of trouble." And I absolutely thought they were detectives; because I knew Sullivan at that time was in trouble, and I thought that—

Q. (Interrupting.) Sullivan had given the information?

A. Either Sullivan, or somebody had come across and given the information.

By Mr. Myers:

Q. Go ahead now; you were talking about The Count.

621 A. He said "Have you got any more stocks?" I said "No; I haven't got any more stocks." He said "Listen Joe: I want to tell you something, between me and you. I don't want to tell my partner"—this Count was posing as a Sergeant at the time.

Q. A Detective Sergeant?

A. A Detective Sergeant; and Furey was going to be made a Detective Sergeant also, later on. He said "Listen, Joe; I don't want Furey to know this." He said "Have you got any stocks? I can get an outlet in Philadelphia, and I can get rid of them." I said "You can?" He said "I surely can. Have you got some?" I told him I had some stocks up in my house in Mount Vernon. He said "You have?" He was surprised. I said "Yes." He said "Listen: I can get a big price for stocks, and I will put them through for you." I said "All right." And I went uptown with him; we hired a car—we took a car, crosstown car, Tremont Avenue, and went down to the Subway Station there; and he hired a car over there.

By Mr. Dooling:

Q. You mean an auto?

A. An auto, yes sir, to take us up to Mount Vernon; because the trains only run up there every hour, and we didn't want to wait an hour; he had to go down to the District Attorney's Office he claimed. We went with that car; I stopped off at my house; he went up in the house with me; my youngest sister, who was not married at 622 that time, was home, and I introduced him as an insurance man; Mildred is her name. I then went upstairs to the attic with him, and I had the stocks up in the attic; and I took the stocks and gave them to him.

By Mr. Myers:

Q. Did he go up in the attic with you?

A. Yes sir.

Q. Will you describe The Count, before you go further?

A. I should judge he is a little over six foot; he weigh- about 200 pounds; smooth faced fellow; must be about the age of between 25 and 30.

By Mr. Dooling:

Q. Is he light or dark?

A. Light.

Q. Clean shaven?

A. Clean shaven fellow.

Q. Any marks about him?

A. At the time he was talking to me he was talking through the side of his mouth.

Q. Through the side of his mouth?

A. Yes; at the time he was talking to me. I don't know if that is the way he always talked. But at the time he was talking to me.

Q. Did he have any peculiar walk? Did he have a limp at all?

A. No; he looked like an athlete; he was a nice built fellow.

By Mr. Myers:

Q. Pompadour hair?

A. I could not say.

Q. Was he a natty dresser?

623 A. Natty dresser; he had one of those soft hats like a detective. He looked like a detective at that time.

By Mr. Dooling:

Q. He played the part?

A. Yes sir.

By Mr. Myers:

Q. What was his religion?

A. I don't know—Irish; and he talked like an Irishman.

Q. Did you introduce him to your sister?

A. Yes; I gave him some name—I don't know what I told my sister. I didn't want to tell my sister about the case; I just introduced him under some assumed name it was.

By Mr. Dooling:

Q. As an insurance man?

A. As an insurance man; and I gave him the stock, and went downstairs with him.

By Mr. Myers:

Q. Do you remember what stocks you gave him?

A. Yes sir.

Q. What?

A. I gave him 500 shares of Southern Pacific stock; 100 shares of American Can; 700 shares of Boston & Wyoming. That is all.

Q. The value of those stocks then, as you recall, was around 84 to \$85,000?

A. Yes sir at that time.

Q. He did not, of course, give you any receipt?

A. No sir; nothing at all.

Q. Did he say how long it would take him to dispose of 624 them?

A. He said it would take a day or two days; going to Philadelphia that night.

Q. Did he say anything about your keeping quiet and not telling Furey?

A. Yes sir.

Q. What did he say?

A. He said he would send me a telegram signed "John."

Q. From Philadelphia?

A. From Philadelphia. In an offhand way, he would say "Everything O. K." or something. Of course, he would not mention stocks or anything. He would keep in touch with me that way. Well, he took me downtown, and he left me off right at my father's store.

Q. Did he say anything about keeping quiet about what happened; about the car and the ring and the cash?

A. Oh, he didn't say nothing then—I don't know what it was—oh yes; he said that it had to be split up between the District Attorney and so forth.

By Mr. Dooling:

Q. Did he say anything about letting your father know anything?

A. Well, my father did know at that time that I was arrested.

Q. Well, wasn't he surprised to find that you were released so quickly?

A. Released? Oh yes, surely. When I left him at my father's store—

By Mr. Myers, interrupting:

625 Q. Will your father remember The Count and Furey?

A. Yes sir.

Q. Have you spoken with him since?

A. Why, he recognized Furey right up here in Mr. Murphy's office.

Q. Will your sister Mildred remember The Count?

A. Yes sir; I guess she will remember The Count.

Q. Have you talked with her about it?

A. I have not talked with her about it yet. But they know Furey. They know Ed. Furey and Adler.

Q. Your sister does?

A. Yes sir.

Q. How?

A. Well, Adler was sleeping at my house a couple of days—rather, my sister would not know Furey; but my father would know him. My father was in the store at the time.

Q. What happened after you got back to your father's store?

A. I told my father what I did and he said "I didn't know that you"—he told me that he did not know I was doing anything like that; that I was crooked. He said "It is the best thing to do; as mother has got heart trouble; leakage of the heart; and she would die if she knew anything was wrong."

By Mr. Dooling:

Q. After that did you go anywhere with either of those men; if so, where?

626 A. No sir—I received a telegram a day or two later from Philadelphia, signed "John." In the telegram The Count just said—I will state it, to my best recollection.

Q. As near as you recall it.

A. He said "Everything is O. K. but will have to be here a couple of days."

By Mr. Myers:

Q. That was stalling along?

A. Yes sir. That was the last time I ever heard from him.

Q. Did you ever get any money from The Count?

A. No sir. I never saw him after that.

By Mr. Dooling:

Q. You believed he was a detective when you turned the stock over to him?

A. Yes sir.

Q. And it was relying on that, that you parted with them?

A. Yes sir. But a day or two later, when I waited a couple of days later, and I didn't get any more telegrams or letters from him, I thought something was funny.

Q. Where did you go looking for him?

A. I went down first to the La Salle Photo Place, where I knew that generally Adler hung out there.

Q. La Salle Photo?

A. Yes sir.

Q. Where is that?

A. Between 53rd Street—there is a new man that owns it now.

Q. And the former owner and Adler were friends?

A. Yes sir; pretty good friends; and so was his wife. I went down there and I said "Was Adler in here?" They said "He was, yes; he was in here nearly every day. He had \$900." I knew that Adler didn't have no money, so I realized where he got the \$900. Then I went up to the garage on Third Avenue and I said—at that time I didn't know Furey's name—I said "The party that bought this car, what was his name?" He said "Why?" Don't you know?" I said "No, I don't know." He looked up the file; he took his file and looked up the name. He said "His name is Furey." And he said he was living at the Salvation Army Hotel.

Q. Where is that?

A. Up at the garage that was.

Q. No; I mean where is the Salvation Army Hotel?

A. That is the Argonne; it is under two names: Salvation Army Hotel and the Argonne; is both the same. He then said—he told me the room number.

Q. What room number was it, do you remember?

A. I can't remember.

Q. Try to remember it; that is important.

A. You have got that up at the automobile place.

Q. He has that record?

A. He has it. He gave it to me.

Mr. Furey: 604. I told him up in the garage.

Mr. J. Gluck: I thought the Salvation Army Hotel was a place for the Salvation Army people; I didn't figure a detective living at the Salvation Army Hotel; that was pretty funny. So I got a friend of mine, Lou Dorfman—

Q. (Interrupting.) You didn't think that was a place for a detective to be?

A. No. I then got my friend, Lou Dorfman, that I had really told him my business, he knew my business. I told him what Adler and Furey and another man did to me. I said "They shook me down; I have got proof of it; they are not detectives." I said "Let's go down to this hotel and find out." We go down to where—I could not find the Salvation Army Hotel in the telephone book. We then looked up—we knew the telephone number and the room number. So I called up Central and asked for that number. She told me that was the Argonne Hotel. I then went down to the Argonne Hotel, 47th Street, with Lou Dorfman.

Q. Did you find Furey?

A. I asked them was there a man by the name of Ed. Furey, a detective, there. They didn't know, they said. I asked the telephone operator, and I asked the clerk. I said "What business is he in?"

They didn't know. I said "Is he here long?" They said "Yes."
I said "How long is he here now?" They said "He is here
629 about eight months. He goes away and he comes back. He
makes his home here."

Q. Did they say what his business was?

A. They would not give me no information on his business at all.
They said they didn't know.

Q. Well, did you see Furey?

A. I didn't see him at that time. I sent down Lou Dorfman to
him—I was afraid to go down. I sent Lou Dorfman down and Lou
Dorfman came back and told me that Furey spit at him. He said—
well, I can't use the words that he mentioned there; it is not nice;
I can't use the words; he didn't talk very nice to him; that is all.

Q. Tell us what he said, as Dorfman repeated them to you?

A. He said "You dirty son of a bitch; if you don't get out of here
I'll brain you."

Q. That is the report that Dorfman made to you?

A. Dorfman made to me, that Furey told him. He said "I bought
that car off him at that time."

Q. What happened after that?

A. Dorfman and I went up to Adler's room. He lived around
40th Street, in a furnished room. I went up there. His wife was
supposed to be in St. Louis at the time. I knocked on the door, and

I was surprised to see that she was there.

630 Q. Not in St. Louis?

A. No; she was in New York. She said she was undressed,
and she would not let me come in, of course. I asked her if Adler
is here—"Is Jack home?" She says "No, Jack ain't here." I said
"Where is he?" She said she don't know. I went down to the
housekeeper, and I said "Do you know if Adler is here?" She said
"Yes; they are both in bed." I then thought of a scheme. I told
Lou Dorfman to call up Adler on the phone, and I asked the house-
keeper—she thought they were crooked, and she was wanting to help
me in every way; but she did not want to make a rumpus about it,
on account of the other people in the house, disgracing it. She gave
me her phone number, and I told Lou Dorfman to call up. I went
in the next room from Adler's. Dorfman called up and said he
wanted to speak to Jack Adler; was a friend of Jack's. He didn't
get up out of bed, but his wife did. She went out, and left the door
open. I jumped in from the next door, and went into the room, and
he was laying in bed, when his wife said he was not home. I said
"Adler, this is a fine"—

Q. (Interrupting.) It was the same man?

A. Adler; Jack Adler, certainly. I said "Adler, that was a fine
thing you pulled off on me." He said "What?" I said
631 "Double crossing me." I said "Getting those two fellows up
there to shake me down." He said "Go on; what are you try-
ing to pull off here?" I said "You shook me down." And his wife
came up in the meanwhile, and when she heard me talking she got
at me and told me to get out of the room. I had to get out of the
room. So the housekeeper told him that they would have to move

By Mr. Myers:

Q. Well, did Adler tell you where Furey took him when you separated from him, with The Count?

A. No sir; he didn't say nothing; he did not admit it at that time; he not admit that he was in the shake down.

Q. What followed after?

A. I went up to a lawyer, in the Longacre Building.

Q. Did you consult him about that shake down?

A. I didn't exactly put it that way. I told him that a fellow shook down a car; they had something on me; I didn't tell him what they had on me. His name is Frankel.

Q. Lawyer Frankel?

A. I forget his first name.

By Mr. Dooling:

Q. Lee Frankel is that?

A. No, not Lee.

Q. In the Longacre Building?

A. In the Longacre Building; yes sir. Three members to the firm.

By Mr. Myers:

Q. Did he do anything?

632 A. He wanted to get an order out to stop the delivery of the car to Furey. That was on Saturday; it was too late.

By Mr. Dooling:

Q. The Courts were closed?

A. Either the Courts were closed—I didn't have enough money to put an attachment on the car; that is what he meant.

Q. He wanted to go around and replevin it?

A. Yes; that is it. This was Saturday. So I went up Monday to him and told him about getting out an attachment for the car—we called up the garage, and he garage man told me that the car was taken out by Furey—the lawyer had called up the garage owner and warned him not to give out the car.

Q. On Saturday?

A. On Saturday. He may have warned him Friday also. I could not say sure. But I am positive he warned him on Saturday not to give out the car, because it was a stolen car, the man did not pay for the car at all, and took it from the rightful owner. The owner said he would not give out the car.

Q. That is the proprietor of the garage?

A. The proprietor of the garage.

Q. He promised not to give out the car?

633 A. Promised not to give out the car. I went up there on Monday—I called up; he said the car had gone. I told that to the lawyer, and the lawyer was going to make it his business to go and see Furey himself.

Q. Do you know whether he did?

A. Not yet, no sir; I don't think he did.

Q. He was waiting for his fee, wasn't he?

A. Well, I did give him some money; I gave him \$50; that is all he asked for the case. I then went up to the garage and I told them about it. I said "Why did you give him the car?" He said "Well, I can't do anything." He said "You may be telling the truth, but he said he bought it off you." I said "Did he pay you for the repairs to the car?" He said "Yes."

Q. Did he mention any price?

A. He mentioned some price; I don't know just what it was. He said that I paid for the car—or that he paid me for the car. I then went down to—I then sent Lou Dorfman down to the lawyer; Lou Dorfman was going to see what he could do about the car. He got his brother, who is an editor on the New York American—

Q. (Interrupting.) Mr. Dorfman?

A. Mr. Dorfman. And he came up, with Dorfman and me, and showed a Police card—I don't know what it was—and told him not to give out the car.

634 Q. One of those Police line badges, wasn't it?

A. No; it was a card; a Police card; allowed to arrest anybody, as long as he shows the card; it shows he is a reporter.

Q. That lets him through the fire and Police lines?

A. Well, he told him not to give it out. Lou Dorfman was walking along Broadway one day, and he noticed, in a dealer's place on 53rd Street & Broadway—between 52nd and 53rd—

Q. (Interrupting.) Was it the High Grade?

A. There is two there; I can't just think of the name.

Q. Vogel?

A. Vogel was where the car was sold. The car was not sold in that place. It was the Gotham I think; it was the one nearest to 53rd Street. He left the car there, and I went down to see the car; and I told the lawyer about it—I didn't tell him—I don't think I told him where I saw the car. But I went right up to Furey that day.

Q. Did you find him?

A. Yes sir; he was at his hotel; he was in the 'phone booth talking to somebody on the 'phone. He said "Hello Joe." I said "Hello." He said "Listen: I want to talk to you." Before I had a word to say to him. He took me over to the lobby; in the
635 lobby there, and sat me down there and told me that. He said "Joe, I was thinking this over, and I was thinking of giving you back the car. You are not a bad fellow; and this here Adler, I didn't know that you were fixing Adler up with money and feeding him and paying his room rent." He said "You are a pretty nice sort of a chap; I think I will give you back the car." He said "First, I have got an appointment with The Count, the other fellow." He said "Yes; he was the one that framed you up, Adler." He told me, he admitted to me, that Adler had framed me up with The Count and him, the way I told you.

Q. Did he say how they split?

A. Yes sir.

Q. What did he say?

A. He told me another party in the Argonne Hotel had the ring for his share—he never shook me down; but I knew he had the ring, because I was there when he got the ring from another party later on.

By Mr. Myers:

Q. Was it Mike Kelly?

A. I don't know who he is.

By Mr. Dooling:

Q. Is that the only time you saw him?

A. That is the only time I ever met him.

Q. How was the money split, according to Furey?

636 A. Well, Furey said he only got the car; and the money and the ring went to The Count and this other fellow; he had a number of fellows in it, he said.

By Mr. Myers:

Q. Did he say what Adler got out of it, if anything?

A. No sir; he did not mention how much Adler got.

By Mr. Dooling:

Q. Did he say whether The Count had told him anything about the \$5,000 dollars of securities?

A. Not at that time. He told me later on, yes sir. When I was in conversation with him he told me he was going to give me back the car; he said he had an appointment with The Count up in front of the Capitol Theatre at 2 o'clock.

By Mr. Myers:

Q. That same day?

A. That same day, yes sir.

By Mr. Dooling:

Q. Now, what happened then?

A. He then told me—I told him I gave The Count some stocks. He said "Yes; I know about that." "And he never wrote to me." He said "I guess he double crossed us." He said "I have got an appointment with The Count; I am going to see him now." He told me to come back the next day. I said "No; I want to get the car today." He said "All right; stick around." He took me up to the Capitol Theatre—the Winter Garden is right opposite
637 the Capitol Theatre. I stayed in the lobby of the Winter Garden so The Count would not notice me. And he went up to speak to The Count; he thought The Count would show up; but

he didn't show up. He said "He double crossed me. I am going to give you back your car; but I want you to give me \$261, that I paid for repairs to the car." I said "Sure; I will pay you that." He said "All right. Now give me \$261, and I will give you the car back." He said "The car is up in the dealer's office there." I said "I know it; I saw it up there." He said "You did?" I said "Yes." I went down to my father and I borrowed some money off him. I came back the same day, it must have been about 4 o'clock—about 4 o'clock; and I said I had the money to give him for the car. I counted out the money for him; it was right; he took out the bill of sale from his pocket and gave it to me back.

Q. That is the one you signed up in the Bronx, that the little girl prepared?

A. Yes sir.

Q. No name had been filled in, had it?

A. No, sir.

Q. Then what happened?

A. At that time there was a name filled in, when I saw it again.

Q. Can you recall the name?

A. No sir;; I can't remember—there was a name; I think
638 it was Ed. Furey, his right name was in the bill of sale when I saw it again; Ed. Furey; but when the Notary Public signed it, it was blank; and it was filled in later.

By Mr. Myers:

Q. What happened after that?

A. He took me up to the dealer, and he introduced me to the proprietor.

Q. Was that Vogel?

A. Not Vogel; that was on 53rd Street. Vogel was the party that sold the car. He introduced me to the party, and he told the dealer, he said "This here is the fellow I shook down." He told the proprietor: "I shook this fellow down; but I found out he was a pretty nice sort of a chap; I am going to give him back his car. What do you think of that?" And the fellow said "That is pretty white," he said, the proprietor. He said: this was the new owner. I said "The car don't do me any good now; I am busted; I would like to sell the car." He said "He will sell it for you. He will get you about \$2,600 for it." I said "All right." I left the car there. He left the car there about a day or two, and he did not sell it. He then met another party, about the same build as he is; I don't know his name; he lives around the forties, above a saloon he told me. He then sold the car to the Gotham I think it was, or Vogel's.

639 Q. Vogel?

A. He sold the car to him for \$2,400, or \$2,300; I could not remember.

Q. And you gave the bill of sale to Vogel?

A. Oh yes. By the way, I tore up the bill of sale that I made out to Furey; and I gave him the original bill of sale, to my name. I had to take this Vogel down to the Stutz people.

By Mr. Dooling:

Q. To convince him that you were the owner?

A. That I was the rightful owner. The party there knew me well, and said I was.

Q. Now, what happened after that?

A. He sold the car to him; and he made out a check for—I don't know whether 23 or \$2,400. We went down to 39th Street, to that bank—

By Mr. Myers, interrupting:

Q. 40th Street; the Commercial Trust Co.?

A. The Commercial Trust Co. Ed Furey signed his name, endorsed it on the back, and cashed it.

By Mr. Dooling:

Q. What did you do with the money?

A. I gave him \$100—he said “I will take it out of this; \$200; \$100 for the fellow that sold the car, and \$100 for myself.” I said “All right.” He said “By the way, Joe, I think I can get you that ring back.” I said “Yes?” He said “Yes, I can get that back. Listen here,” he said, “this fellow is up at the Argonne”—you see, he was kind of sore at Adler now, because he said “You were white to him and you picked him up on Broadway and bought him meals and everything, and gave him money; I think that is a pretty raw deal that he gave you.” I said “Yes, it was; I know it was.” He said “Listen: Come on up to the Argonne.” And I came up to the Argonne and I stayed in the lobby; and this party came down there; I can't just describe him; must be about five foot five, with a heavy build. Then Furey called him over—on the way walking down to 47th Street he said “Listen: I will get you that ring back. It will cost you \$1,200 for that ring.” He told that party—that was the price agreed. He said that party wanted \$1,200 for the ring; before we went to the hotel he told me that, when he drew the money out of the bank. I gave him the \$1,200, and the fellow took the ring off his finger and gave it to me back.

Q. You don't know how he split it up, of course?

A. No. He gave all the money to that party who had the ring; he gave all the money at that time to him.

Q. What happened after that?

A. We went back to the hotel. He said “Listen, Joe: I am going out of town; you can make lots of money.”

By Mr. Myers:

Q. Did he say where he was going?

A. Yes; he told me he was going to Cleveland.

Q. Did you go with him?

A. Yes sir—just one moment please. He said “Come along with me; I will show you how to make lots of money.” He said “Joe,

The Count done you out of that money for the stocks; but listen, Joe: I am pretty white to you; I want you to get some more stocks; I can get an outlet for them."

By Mr. Dooling:

Q. Who said this?

A. Furey.

Q. Right here in New York?

A. Yes sir. I told him I was through; I said I didn't want to have nothing to do with it any more; I was through at that time.

Q. You were sick of it then at that time?

A. I was sick of it, because I didn't have any money out of the whole thing.

Q. You lost the car, and everything?

A. Yes; and I would have quit; because I was working in my father's store at the time, and had made up my mind to be straight and do nothing wrong. But I was afraid to quit, because those fellows were coming to me, after the shake down, and wanted to shake me down for more money, and I didn't have any money.

Furey told me Adler said that if I didn't come across with some more money, he would have to squeal on me. I didn't know what to do; I didn't want to go back. I was afraid not to. Furey told me to go downtown and get some stuff, that he could get an outlet. He told me to get stamps too; that he had a party in the Argonne that could dispose of them. Revenue Tax Stamps. We waited around about three or four days——

Q. Before going to Cleveland?

A. Yes sir.

Q. Then what happened?

A. I then went—he told me he was going to Cleveland; was going out on business. I went with him to Cleveland. Went to the Grand Central Depot and took a train for Cleveland; it was at night—I don't remember; I guess it must have been about midnight; I can't just remember. And he stopped off at Cleveland. He was telling me he was afraid to go to Cleveland.

Q. Why?

A. Because he said he broke into jail there.

Q. Broke in or out?

A. Well, he got a fellow out of jail.

Q. That is, he broke in to get another man out?

A. Yes sir. And he had to disguise himself. So on the trip he bought a pair of goggles; sun goggles.

Q. Brown glass?

A. Yes. He wore them. He said "I don't think they will know me now; that happened in 1909."

Q. It was in 1909 that he had that experience out there?

A. Yes sir. We got off at Cleveland, and he hired a cab, and we stopped off—we went around looking for a hotel.

Q. He didn't want to go to one of the big hotels?

A. No; he didn't want to go to a big hotel. But all the hotels they didn't have any room.

Q. It was crowded?

A. It was crowded.

Q. Did you get a furnished room?

A. No sir; we took a room at—I don't think it was the Euclid at first. There was a hotel right next to it; right next to the Euclid.

Mr. Dooling (addressing Mr. Furey): What was the name of that hotel?

Mr. Furey: Euclid Avenue Hotel it was.

Mr. J. Gluck: It was another hotel right next to the Euclid. We only spent the night there.

By Mr. Myers:

Q. How did you register?

A. I registered under the name of Joe Green, which he gave me; and he registered under the name of Ed. Mason. It is a little hotel. And he didn't like the hotel, so we moved over to the Euclid Hotel the next day. His idea of going to Cleveland was to shake
644 down a party, an automobile concern by the name of Sullivan.

By Mr. Dooling:

Q. Shake them down?

A. Yes sir.

Q. For what?

A. He had something on this fellow, who he claimed had a place up in the Bronx somewhere, and he was dealing in stolen automobiles. So he went over to—he ran away from New York and went to Cleveland and opened a place there under an assumed name; he went under two names I think; I am not certain.

Q. Do you know the names?

A. Yes; Sullivan. But I am not sure that was his rightful name. And the other name I can't remember.

Q. Sullivan was his right name?

A. Yes.

Q. And he skipped to Cleveland?

A. Yes sir; he had a place there; that is the story Furey told me.

Q. Did you go to that place with him?

A. Before we went there he stopped off at a place where they make cards, and he had some cards made out in the name of Joe Green——

Q. (Interrupting.) You mean printed?

A. Printed in the name "Joe Green, Dealer in Automobiles," and I don't know, "Broadway and somewhere."

Q. New York?

A. New York. "Green & Company."

Q. Fake business card?

A. Yes. And he gave me those cards and wanted me to
645 go into that place of Sullivan and—I don't know—Sullivan was the owner of that place—to find out what cars——

By Mr. Myers:

Q. He had in that place?

A. He had in the place for sale. I should stall off, and find out; tell him I was a buyer, and get all the best cars he has got; and he was going to shake him down for those cars.

Q. Did he tell you any name to give, or any name to tell the fellow there, that would convince him that you were all right?

A. Well, "Joe Green, Dealer in Cars;" that I was in Detroit—he gave me a story to tell: I was in Detroit at the time to buy cars, and didn't like the cars there, and came over to Cleveland to see how the cars are over there. I wanted to buy them up cheap. I didn't know anything about cars or anything.

By Mr. Dooling:

Q. It was new to you?

A. It was a new business; because even though I had a car, I just learned to drive it.

Q. You bought that from a dealer?

A. Yes.

Q. What happened when you went to Murphy's place?

A. Sullivan's place. I went in there—and he had instructed me to find out about what kind of cars were in the place, and to pick out the best cars, and make out a list.

646 Q. Did you do that?

A. Yes sir.

Q. What happened then?

A. I then went back.

Q. Did you meet him?

A. I told Mr. Sullivan, I said "I don't want the cars right away. I have got to call up New York; my father; I am in partnership with my father; I will have to give him the particulars of these cars." So I made out a list, wrote down the makes of the cars; how much he wants, and a lot of other stuff. Of course, Furey instructed me on that also: When he mentioned some price, to mention a lower price—

Q. (Interrupting.) To shave him down a bit?

A. Yes. Because he knew a lot about cars.

Q. The different makes?

A. The different makes; because I didn't know. He instructed me every time I went there; so I looked as though I was really a dealer and knew something about cars.

Q. So as not to be too ignorant about cars?

A. Yes. I looked at the cars.

Q. And what happened?

A. I told him I would be in to-morrow.

Q. Did you go back?

A. The reason for going there was to look at the cars and find out what kind of a sort of looking man is Sullivan; that was
647 the reason of going there.

Q. That was the real reason?

A. I went back and told Furey what happened. He said "Have you got the list?" I gave him the list. He said "Go back again and see if you can catch the man in. The man I want is Sullivan." And he described the man.

Q. Where was this place in Cleveland?

A. I don't know the street. That was the first time I have ever been in Cleveland.

Q. How near the hotel?

A. It was by the Statler Hotel.

Q. Was there a trolley line on the street?

A. Yes sir; it was a wide street. It is right near that theatre; I think it was Loew's Theater—yes, Loew's Theater.

Mr. Dooling (addressing Mr. Furey): What street was that?

Mr. Furey: Leave him mention the street; he is telling the story. He is telling a God damn dirty lie.

By Mr. Myers:

Q. It was near Loew's Theater?

A. It was just a couple of doors below Loew's Theater, on the same side. There is another place on the other side. That was on the same side as Loew's Theater.

Q. Was it a garage, or just a store?

648 A. It was a wholesale dealer.

By Mr. Dooling:

Q. He had a nice show window?

A. He had a show window, and he had a place in the back with a lot of cars in there.

Q. Now go ahead. Did you go back a second time?

A. I went back and I talked to the party. I told him I had to call up my father, to accept the check; I would like to buy those cars. I said "Are you the boss here?" He said "Yes." I said "What is your name?" "Sullivan." That is the man I wanted. I went back and told Furey right away; and he came down and went in the store; and I waited on the other side. What took place in the store, Furey can tell you.

Q. What did he say to you when he came out?

A. He said that—oh, he instructed me before, that when he should come out, I should trail him and see if anybody was following him.

Q. Did you do that?

A. I did.

Q. Was anybody following him?

A. No sir.

Q. The road was clear?

A. Yes sir.

Q. Then what happened?

A. He told me that he had the right man; he tried to make an

offer; Sullivan was a wise fellow, and asked him for a warrant; Furey didn't have any badge with him either; he didn't have any warrant to show. Furey was telling me he wanted to settle with a car; that was all; no more.

Q. The man was willing to give a car?

A. Yes; but Furey said he would not take a car; he would let the car go.

Q. He wanted money?

A. He wanted money; and he wanted cars also.

Q. Did he say how much he wanted all together?

A. He told me he ought to be able to get four or five cars.

Q. And how much cash?

A. He didn't mention just how much cash he could get.

Q. What were you promised for going along with him?

A. He promised me a car.

Q. A good one?

A. I don't know; I can't say.

Q. It depended on what you would get?

A. Yes sir.

Q. Did you stay there longer than that?

A. Then we came back and he called up a party who gave him Sullivan's name—he sent a telegram to the party.

Q. Was it a lawyer?

A. No sir, it was not a lawyer.

Q. Did you ever hear the name before?

A. Yes; I heard of him.

Q. Bernstein?

A. No sir.

650 Q. Ginsberg?

A. He showed me the building where that man was that gave him——

Q. (Interrupting.) Rabinowitz?

A. I could not remember. He showed me the building where that party is, who gave him all those names, to shake down people.

Q. You mean here in New York?

A. Here in New York; I think on Fifth Avenue—it was the American Tobacco Building I think.

Q. Up in the forties?

A. No; it is below 20th Street.

Mr. Dooling (addressing Mr. Furey): What building was that, Mr. Furey?

Mr. Furey: There was no such building as that.

Q. Well, the telegram was from Furey to someone in New York?

A. The telegram was from Furey to someone in New York.

By Mr. Myers:

Q. Can you fix the time?

A. I know the telegraph office.

Q. The month?

- A. When did I register at Montreal?
 Q. January 24th, at the St. Lawrence Hall.
 A. Two days before that; would be the 22nd.
 Q. January 22nd?
 A. Or between the 20th and 22nd.
 Q. Of January this year?
 A. Yes sir.
 651 Q. What name did he sign to that telegram?
 A. I don't remember.
 Q. Can you say on what street that telegraph office is in Cleveland?
 A. It is on—I think it is on the same street with the Statler Hotel.
 Q. Well, there is a telegraph office in the Statler. Was that it?
 A. No sir; it was not in there; it was on the outside; it was a store;
 a regular Western Union office.
 Q. Do you know the contents of that telegram?
 A. No sir. He told me he sent it.
 Q. What happened after the telegram was sent?
 A. He said "Well, you have got to take it the way it comes." He
 said "You can't always do it." He said that was the first time he
 ever failed.
 Q. That was the first time he ever failed?
 A. Yes sir.
 Q. Did he say any other places he had been where he had suc-
 ceeded?
 A. He just told me about the boat; that is all.
 Q. What boat?
 A. The "Oceanic."
 Q. He told you about the "Oceanic"?
 A. Yes; he mentioned that boat.
 652 Q. Did he mention Mr. Kean?
 A. Yes; he mentioned Kean was in on it.
 Q. Did he say how much they shook down in that?
 A. No, he did not.
 Mr. Furey: Have you been promised immunity in this case?
 Mr. J. Gluck: No.
 Mr. Furey: You have not?
 Mr. J. Gluck: No.
 Mr. Dooling: No more than you have.
 Mr. J. Gluck: I am telling the truth.
 Mr. Furey: Just wait a minute now. Did you ever tell me that
 you bought your father that store?
 Mr. J. Gluck: I never did tell you that.
 Mr. Furey: You did not?
 Mr. J. Gluck: No.
 Mr. Furey: Did you tell me that you bought your father a home?
 Mr. J. Gluck: No; I never told you that.
 Mr. Furey: With the bonds that you stole?
 Mr. J. Gluck: I never told you that.
 Mr. Furey: Didn't you never tell me that you bought your brother-
 law a laundry with the bonds you stole?

653 Mr. J. Gluck: I did not tell you that. But you told another party——

Mr. Furey (interrupting): Wait a minute. I am asking you questions. Won't you say yes or no? Did you tell me that?

Mr. J. Gluck: Of course not. But you told Rudie Bunora that you were going to stick——

Mr. Furey (interrupting): Bring Rudie Bunora up here. I want to ask you another question: Wasn't you slapped and slugged by Mayer into making this confession, when you were down there? I am asking you that question.

Mr. J. Gluck: I don't have to answer that question; that ain't got nothing to do with the case.

Mr. Furey: I am asking you; I have a right to ask you any question I want.

Mr. J. Gluck: I don't have to answer you.

Mr. Dooling: Yes; you can answer that.

Mr. J. Gluck: When I was first arrested, he hit me in the jaw.

Mr. Furey: Did he slap you and slug you up in the pen?

Mr. J. Gluck: He did.

654 Mr. Furey: How many times did he do that to you?

Mr. J. Gluck: About three or four times, until I told the truth.

Mr. Furey: Has he made any promise to you?

Mr. J. Gluck: None.

Mr. Furey: He has not?

Mr. J. Gluck: No.

Mr. Furey: What is your idea in your method of coming up here——

Mr. J. Gluck (interrupting): To tell the truth.

Mr. Furey: Wait a minute—in making a play for immunity here? Didn't you tell me over there that you said you were going to get out of it, and get a suspended sentence?

Mr. J. Gluck: I said nothing of the sort.

Mr. Furey: You are a God damn liar.

Mr. J. Gluck: Can I ask him a question?

Mr. Dooling: Yes.

Mr. J. Gluck: Didn't you tell me that you were up in Mr. Dooling's office one night until 1 o'clock, and he questioned you, and you told him nothing about Cleveland, and I should not say anything about Cleveland?

655 Mr. Furey: No, I did not. Wasn't you sick with a dose of clap in Cleveland, and laid on your bed and didn't get out of it?

Mr. J. Gluck: I did not; I went to Sullivan's place; I can prove it by Sullivan himself.

Mr. Furey: All right; bring Sullivan here.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

Recess for supper until 8 p. m.

In the Matter of NICHOLAS ARNSTEIN.

New York, May 8th, 1920.

After Recess—8.30 p. m.

Present: Counsel and witnesses as before.

JOSEPH GLUCK recalled.

Examined by Mr. Dooling:

Q. What telegrams were sent from Cleveland?

A. He sent a telegram to a party in New York; I don't know the name. We didn't wait any longer then; we took the next train out to Buffalo.

Q. Did you stop at Buffalo?

A. Over night, yes.

By Mr. Myers:

Q. Before you go out of Cleveland: Did you see this party in Cleveland? (Showing witness photograph of Edward P. Strong.)

Mr. Dooling: At the hotel, or anywheres else?

A. No sir.

Photograph marked Exhibit 1 of this date for identification.

Q. Did you see this party in Cleveland? (Showing witness photograph.)

A. No sir.

Photograph marked Exhibit 2 of this date for identification.

Q. Did you see this party in Cleveland? (Showing witness photograph.)

A. No sir.

Photograph marked Exhibit 3 of this date for identification.

Mr. J. Gluck: We stopped over night in Buffalo.

By Mr. Dooling:

Q. Where?

A. I don't remember the name of the hotel. It is just about a block or two away from the Station; under the same names; Joe Green and Ed. Mason.

Q. Were any telegrams or telephone messages sent from there?

A. No sir, not that I can remember of.

Q. Where did you go from there?

A. Took the train up to Hamilton, Ontario.

Q. Did you meet anybody there?

Yes sir.

Q. Who?

A. Later I learned it was—I found out it was Eddie Mines.

Q. Did you have any dealings with him?

A. Furey talked to him about bonds.

Q. About what?

A. About stocks and bonds.

Q. About selling stocks and bonds?

A. Yes. And he said he could get a broker to dispose of \$100,000 worth.

By Mr. Myers:

Q. Eddie Mines is a noted crook, isn't he?

A. As far as I know, yes—that is what I was told. I was told he was a noted crook, and he was not allowed to come to the United States. He said he had an outlet for \$100,000 worth of stock.

By Mr. Dooling:

Q. For \$100,000?

A. Yes. And Ed. Furey told him he was going to Montreal, and he had an appointment—he made an appointment with Eddie Mines there for one day in Montreal. I don't remember just what day he made it for; I think it was a Monday.

Q. And did Mines meet him on Monday?

A. No sir. We arrived in Montreal—

Q. (Interrupting.) When?

A. We stopped in this town here, Hamilton, Ontario, a couple of days, in a small hotel; I don't remember the name.

Q. Under the same names?

A. The same names, yes sir.

Q. Mason and Green?

A. Yes sir. And Furey sent a telegram to Kean; and Kean sent a telegram back.

Mr. Myers (addressing Mr. Kean): Is that right, Mr. Kean?

Mr. Kean: Well, about the telegram is correct. I don't know about the rest.

Mr. Myers: You received a telegram and you sent one back?

Mr. Kean: Yes; I sent a telegram to Mr. Furey at Hamilton, Ontario.

Mr. Dooling: What hotel was it you sent it to in Hamilton?

Mr. Kean: The Stroud Hotel.

Mr. J. Gluck: Yes; that is right.

Mr. Myers: Do you remember the date, approximately?

Mr. Kean: Well, that night they left for Montreal; the day previous.

Mr. Myers: Look at your diary.

Mr. Kean: It will be the day previous to the day they registered at the St. Lawrence Hall.

Mr. Myers: The 23rd of January?

Mr. Kean: Yes. He left that night.

Mr. J. Gluck: We stayed a couple of days in the hotel at Hamilton; the Stroud Hotel. We went over to Montreal, and he had an appointment with Kean over at the Queens Hotel. Waited around there for Kean. And we met Kean and Hays.

Q. Which Hays?

A. The party sitting over there. (Indicating David J. Haines.)

Q. Haines?

A. Haines, rather.

Q. They were together?

A. Yes sir.

Q. Did you have any talk then with Furey and them?

A. I was introduced to them. Just talked about how they were getting along, and everything else.

Q. Did they say what they were doing? Whether they were slow; whether they were ready to go into a new business deal, and so on?

A. They started talkin' about that boat question; about that boat.

Q. About the "Oceanic"?

A. Yes sir.

Q. Did they say anything about cleaning up on that?

A. No; just a lot of things—

Q. What did they say about the boat, as you recall it?

661 A. They did say something like that: That there was a party at No. 1 Broadway I think, who owned the boat, and had it insured; and that somebody was supposed to get \$5,000 for burning the boat, and they never got it.

Q. That was not a very good job, was it?

A. No sir. And they were going down to shake that party down for money.

Q. That is, to blackmail them?

A. Yes sir. They had been down there a couple of times before.

Q. And had not succeeded?

A. No sir.

Q. And they were going back again?

A. Yes sir.

Q. Then what happened?

A. Well, Kean said he knew a good hotel; it was the oldest hotel in Montreal. And he took us over to St. Lawrence Hall.

Q. And you registered there?

A. Yes sir.

Q. As Mason and Green?

A. Mason and Green, yes sir. We each had separate rooms.

Q. What happened then?

A. Well, Haines was there just a little while I think, and then he went away.

Q. He had been recently married, hadn't he?

A. I don't remember about that.

Q. Then what happened?

A. I went up to the room.

Whose room?

A. My own room.

Q. Did they follow?

A. No sir; they went down—they had a talk down in
662 the lobby.

Q. That is Kean and Furey?

A. Yes sir.

Q. Did you hear them?

A. No sir; I was up in the room at the time.

Q. Afterwards, did you see Furey or Kean?

A. I washed up and I came down, and I saw Kean and Furey
talking together.

Q. Did you then learn that they had been discussing bonds and
stocks?

A. Yes sir.

Q. And with what result?

A. Well, I told them that I could get a lot of stocks; I told them
that. And Kean said he had—I don't know whether it was a brother-
in-law or a brother over in the Bank of Nova Scotia; he was going
over there to find out all he could about stocks, because he didn't
know anything about stocks at that time.

Q. He wanted to get information?

A. Yes sir.

Q. So that if he went to a broker he would not be ignorant
about it?

A. Yes sir.

Q. Did you give him a little information about stocks; the dif-
ference between coupon and registered bonds?

A. Yes sir; I told him what kind of stocks they were.

Q. Preferred and common stock?

A. Yes sir.

Q. And about dividends and so forth?

A. Well no; I didn't say anything about that.

663 Q. You did not go into the dividends?

A. No sir.

Q. Did you tell him about certificates, and endorsements; how
they were handed around by each other?

A. Yes sir.

Q. And that they were negotiable, and made good delivery, by
passing from one to the other?

A. Yes sir.

Q. Then he left you, did he?

A. Yes, he left me—

Mr. Furey (interrupting): Pardon me, Mr. Dooling. Don't you
think it would be proper for you to let him tell his own story with-
out your questioning him?

Mr. Dooling: Sure; go ahead.

Mr. J. Gluck: Kean came back later on and told a story about his
brother, or brother-in-law. He said that they could not borrow—
they could not take in the bank more than \$30,000 worth of stock.

because they needed all their money for the manufacturing concerns; they could not loan it to the brokers; there was a bigger holler about it in Montreal then. He said he had a party, a man by the name of Bryant, that he knew a firm by the name of Bryant something; he was going up to see him about it. He went out; and he came back and he said the man, Mr. Bryant, was busy. He went up; he said he had an appointment with him at 3 o'clock up at the brokerage house.

Q. And did he come back then after three?

A. Yes sir.

Q. He then came back and reported?

A. Yes sir.

Q. What did he report?

A. He said this man was running a firm downstairs in the same building, by the name of Fairbanks, Gosselin & Company.

Mr. Kean: Fairbanks & Gosselin.

Q. So he was running two organizations: One in his own name, and one in this other name?

A. Yes sir; and this other party, Gosselin, was running it for him, and he was afraid they were going to get the books; because they were all fixed up.

Q. Did he say anything about Gosselin at any time, as being the Gosselin, a swindler that had been convicted in New York some years ago?

A. No sir. But he said he was living with another woman, not his wife, up in Montreal, and that he had to go away; he was going to go away with that woman anyway, and they thought of putting this deal through before he went away; he said one more would not matter, if they put over another one; he had to go away anyway.

He told me that the only way he would handle them would be a large quantity; he could place up to \$5,000,000 worth.

By Mr. Myers:

Q. Who said that?

A. Kean told me that.

Q. Was Furey present?

A. Yes sir.

By Mr. Dooling:

Q. Were you urged, or encouraged to get securities of the value of \$5,000,000, to be disposed of there in Canada?

A. Yes sir.

Q. What was said about that?

A. Well, they told me to go right back to New York, not to wait for Eddie Mines to come up there; and he would follow the next day—Furey would follow the next day.

By Mr. Myers:

Q. Were you to start right in to get securities together?

A. Yes sir.

Q. Without any delay?

A. Without any delay.

Q. Was there any suggestion as to how they would be gathered together here in New York, and carried to these people? In other words, whether it would require one or more trips?

A. Yes sir; there was an arrangement made for that after we arrived in New York.

Q. Tell us what the arrangements were?

A. Well, they saw me off on the train; came down to the Station with me; Furey said he would follow the next day. I went on to New York. The next day I met Furey—or first, I called 666 him up, rather, he called me up, or I called him up—I don't know which.

Q. On Long Distance phone?

A. No; when he was in New York.

Mr. Furey: It was I called him up.

By Mr. Dooling:

Q. He called you up at your home in Mount Vernon?

A. Yes sir.

Mr. Dooling (addressing Mr. Furey): You were in New York, were you, at the Argonne Hotel?

Mr. Furey: At the Argonne.

By Mr. Myers:

Q. Then what happened? What did he say?

A. He said "All right; come right down." He had something to tell me.

Q. Did you go down?

A. Yes sir.

By Mr. Dooling:

Q. What did he tell you?

A. He told me that the outlet was all fixed up now.

Q. They had an outlet?

A. Yes. He said he left Eddie Mines go; he said he didn't show up anyway.

Q. He was only in for \$100,000, wasn't he?

A. Yes sir.

Q. That did not compare with \$5,000,000?

A. He thought it would be best to go on with the other.

Q. What else was said?

A. Well, he told me to get right busy and make my arrangements.

667 Q. Was there anything said as to how you would divide, split up?

A. Yes sir.

Q. What?

A. Split even. He said he was going to get 80 per cent for it.

Q. That is, he said that through the Canadian outlets it would be possible to realize, in the shape of loans or otherwise, 80 per cent of the market value?

A. Yes sir.

Q. How was the 80 per cent of the market value to be split up or divided?

A. Well, it was to be divided between the brokers, and the three of us.

Q. In what per cent?

A. Evenly.

Q. That is how many ways; four ways?

A. Four ways; and we had to give something to the boys that got the stuff.

Q. What amount was sort of reserved for the boys?

A. 10 per cent would have been enough.

Q. 10 per cent of the amount stolen by the boys would be given to them?

A. Yes sir.

Q. So that if they stole \$100,000 worth, that would be \$10,000?

A. \$10,000—no; 10 per cent of the 80 per cent would be—

Q. On \$100,000, that would be \$8,000?

A. \$8,000.

Q. And the other \$72,000 would be divided four ways?

668 A. Yes sir.

Q. So that each of you got the equivalent of that; or \$18,-

000?

A. Yes sir.

Q. And that appeared to be satisfactory? Or was there any kick over it?

A. There was no kick at all.

Q. Was there anything said about the risk that was incurred, and what should be done in case any of the boys might be arrested and squeal; or the Police, by reason of their activities—

A. (Interrupting.) That comes on later on; after we got the boys. I could not do anything the first two days; but I knew a party down in Carlisle, Mellick & Company.

Q. C-a-r-l-i-s-l-e, M-e-l-l-i-c-k & Company?

A. Yes; 43 Exchange Place.

Q. What was that; a messenger or a head messenger?

A. There was a man working inside.

Q. An inside man?

A. Yes sir.

Q. You mean at the receiving desk for securities?

A. Yes sir.

Q. Do you want to say who that was?

A. I really don't remember his name.

Q. Can you describe him; or could you identify him?

A. I could identify him, yes sir.

669 Q. Did you try to make arrangements with him?

A. We did make arrangements; he was going to get quite a lot of it.

Q. How was he to get it? By having boys deliver it to him, and then claiming it was not delivered?

A. No. He was to get my brother to go down there with a bag, and to get the securities; and get them that way—before I come to that: I told Furey about this here, up at the Hotel Argonne.

Q. You mean the Argonne, A-r-g-o-n-n-e?

A. Yes. I told him the best way to do that is to get a bag like the Wall Street boys carry.

Q. That is, one of those leather bags?

A. Yes. I bought that bag for my brother. And we hired a cab, the three of us, my brother, Furey and I.

Q. Where did you hire the cab?

A. Furey picked up a taxicab driver that he knew on Broadway.

Mr. Dooling: Where did you pick it up, Mr. Furey?

Mr. Furey: Positively a pack of lies. I did not pick up any.

Q. Where did you buy the bag?

A. Downtown.

Q. Around what street?

A. My brother can tell you that. I wasn't with him when he bought it. He brought the bag back; Furey and my brother
670 bought the bag; it is downtown on Nassau Street somewhere I guess. I paid something like \$15 for it; a brand new bag.

Q. One of those black ones, with a chain?

A. No; a brown one, with grey cloth, like all the bankers use. And I had my brother go down there to that firm, and Furey was to follow him—he looks like a detective.

Q. It would look real?

A. It would look real for him to follow that young boy down there; it would not excite any suspicion.

Q. And then what happened?

A. We took the cab down—we offered him \$10 for a few hours.

Q. That is, you made a deal with the cab driver?

A. Yes; for a few hours.

Q. Was it a horse drawn or motor vehicle?

A. Motor vehicle. And we went down there to Pine Street & Nassau Street, on the corner there.

Q. In front of the Sub-Treasury—at the rear of the Sub-Treasury, Pine & Nassau?

A. No; not Nassau; William. Pine & William Street.

Q. That is down in front of Kuhn, Loeb & Company?

A. Yes sir; that is right in back of the Bank of America. Then my brother and Furey went inside; it was all arranged for
671 them to go into the place. My brother and Furey went into Carlisle, Mellick; they went through the building so that they would not be noticed so much on the street. They went

to Carlisle, Mellick—there is a special cop there; they always have a special cop there; we knew that, and the only way not to excite suspicion, Furey was to call this cop's attention away from the window; because—

Q. (Interrupting.) Who was assigned to the duty of attracting his attention elsewhere?

A. Furey.

Q. What was he to do?

A. He was to attract his attention, and to stand—to take the special policeman on the side, while my brother went to the window there—they are all windows lined up, in Carlisle, Mellick, in the hall. I was to stay downstairs in the taxicab. I waited a while, and I then went up in the building. Somehow or other the boy failed to get the stuff, because he was transferred from that department that very day. And Furey was talking to that special policeman, with his back towards my brother—because he is a pretty big man of course—before my brother went in there the special policeman said "Where are you going? What have you got?" He said "I have got to get some stocks delivered, such and such a firm"—

I don't know just what firm he said. Because the special policeman asked everybody that. I seen Furey in there, but thought he was just waiting for my brother—he stood there talking to the special policeman—he said he thought he knew Furey. He said "Were you a detective? Were you on the Secret Service in Brooklyn?" That is the conversation I heard from Furey himself; I was not there when he was speaking to the special policeman there.

Mr. Furey: You were not in the building at that time, were you?

Mr. J. Gluck: I was in the building at the time.

Mr. Dooling: Do you remember going down there, Mr. Furey?

Mr. Furey: Positively not. It is a lie—well trained for it too.

Mr. J. Gluck: Then later I went into—I was in the building all the while, because 37 Wall Street and 43 Exchange Place runs in one building, you know.

Q. You mean Wall Street; that building does not run through to Pine Street.

A. Yes; that is 37 Wall is the same as 43 Exchange Place.

Q. You mean it goes through to Exchange Place?

A. The building goes through.

Q. Different sides?

A. Yes; if you get off the first floor, 37 Wall, you can make the fifth floor of 43 Exchange Place.

Q. You were talking about Pine Street at the start.

A. The cab was left there; and when we would get the securities, we were to go back to the cab and shoot right uptown.

Q. That is where you left the cab?

A. Yes sir.

Q. You did not want to leave the cab in Wall Street?

A. No sir.

By Mr. Myers:

Q. Was this the first day?

A. Well, that was not the very first day; that was a couple of days later; a day or two later; I don't know just how long.

Q. How many days before you were arrested?

A. About eight days—not eight days.

Q. You were arrested on the 10th of February?

A. When I got back, it must have been about the 2nd I guess; I am not quite sure; or the 1st.

Q. This was about the 4th, was it?

A. About the 4th I think.

By Mr. Dooling:

Q. Well now, what happened? You say you went to Carlisle & Mellick, and he had a talk with the special policeman, and nothing developed there. Now, did you get any anywheres else?

A. I went right uptown, and Furey took the bag.

674 Q. Didn't you go to any other brokers?

A. No sir.

Q. You did not get anything that day?

A. No sir.

Q. What was the matter? Did you get cold feet?

A. No sir; we didn't have any other connection.

Q. In other words, no other arrangement had been made for that day?

A. No sir.

Q. Well, did you go anywheres else?

A. We went right uptown; took the cab right uptown. I was disgusted; Furey said it was all right, another day; it didn't matter now. He said "You have got to expect that." I had to make another arrangement. I went uptown in the taxicab and left him at 47th Street.

Q. What arrangements had you made with Carlisle, Mellick's man for securities? Were you expecting, with his assistance, to get a big bundle of them that day?

A. Yes sir.

Q. Any idea as to the amount?

A. No idea. It was as much as he could hand out of the window.

Q. How was he to slip them out?

A. Through the window.

Q. Yes; but was he to represent to his employer that the stock that he turned over to you had never been left by the messenger boys, or what? What was his story?

675 A. Oh well, they were in a big box; he would take them out of the box and slip them through the window, where my brother had the bag open, or push it right in——

Q. (Interrupting.) How much of securities could that bag hold?

A. Oh, the bag could hold a good deal.

Q. A million dollars?

A. It could hold \$5,000,000 worth, if you could get it in big amounts.

By Mr. Myers:

Q. How much did you expect to make in your haul that day?

A. I didn't know; I had no idea.

By Mr. Dooling:

Q. It depended on what he got?

A. How much he got.

By Mr. Myers:

Q. What did you expect to get?

A. I didn't expect anything—I expected stock; I didn't know how much; I couldn't say.

By Mr. Dooling:

Q. Didn't you and this man in Carlisle, Mellick's talk it over?

A. Well, we talked it over.

Q. Did you expect a million, two million, five million?

A. I could not tell that.

Q. Did you expect to make a great haul that day?

A. Yes sir, we did.

Q. Now, what happened after that? Were you all disappointed, on the way up in the cab?

A. Yes, we were.

Q. Did you and your brother accompany Furey uptown in the cab?

A. Yes. Furey went up to 47th Street, and Furey took the bag, and brought it up to his room, I suppose; I don't know; I left him right there.

By Mr. Myers:

Q. So that there was three of you came down in the cab, and three of you returned?

A. Yes sir.

Q. You, your brother, and Mr. Furey?

A. Yes sir.

Q. You did not see Kean anywhere that day?

A. He was not in that day.

Q. You did not see any of the detectives?

A. No sir.

Q. You were not in any way apprehended or approached by anybody?

A. No sir; no, I was not.

By Mr. Dooling:

Q. Was this before Kean arrived in New York?

A. Yes.

Q. So far as you know?

A. So far as I know; that is right. So far as I know. I don't know.

By Mr. Myers:

Q. You and Furey started in as soon as Furey got back to New York; is that right?

A. Yes sir.

Q. You started in that day, on that job of Carlisle, Mellick, without waiting to see Mr. Kean?

A. Yes sir.

Q. Did you see Mr. Kean that evening?

A. No sir; not that night. I think I saw him the next day.

Q. Where?

A. At the Claridge Hotel.

677 By Mr. Dooling:

Q. Did Furey say anything that day, either before you got down to Carlisle, Mellick, or while you were there, or on your way back, or later that day, about Kean, or Kean's interest in the matter?

A. Why surely.

Q. What help or protection Kean could give you?

A. He was to give quite a lot of protection.

Q. In what way?

A. To dispose of the securities we would have to go to Canada.

Q. Was there anything said about any safe place in Canada, whether you would be free and immune from arrest there?

A. Yes sir.

Q. What was said?

A. He said he had all the protection in the world over there, for everybody.

Q. Did he say how he had it; with whom?

A. He was in good with the Police over there. He said he could put me in a small town for a while.

Q. And agreed to put the other boys in school?

A. He said that later on in the story.

Mr. Furey: Did Kean say that, or did I say that?

Mr. J. Gluck: Kean and you both said that, at different times.

678 Mr. Dooling (addressing Mr. Furey): Don't hesitate, if there is anything you want to set straight.

Q. What happened after that Carlisle, Mellick incident? Was that discussed, as to the failure of that plan to materialize, and what ought to be done to prevent a repetition of that?

A. Well, he took it bad; but he said there would be another time.

Q. Now, that same day or the next day, did you try to make connections elsewhere?

A. Yes.

Q. What did you do?

A. Well, it was done—I went down to the doctor's the next day, and I met two boys.

Q. You were under medical treatment at that time?

A. Yes sir.

Q. No bones about that. What doctor was that?

A. I think it was Rosenthal, in Norfolk Street.

Q. Stanton Street?

A. No.

Q. Delancey?

A. One block to Broome Street, and Norfolk; Dr. Rosenthal I think it was. He is a gonorrhea specialist.

By Mr. Myers:

Q. Well, go ahead.

A. I went down there and I saw two boys there talking about Wall Street.

By Mr. Dooling:

Q. You thought, from their talk, that they were familiar with it?

A. Yes. I met the boys; I used to talk to them in there; 679 I met them in there about a week previous to that.

Q. And you knew they were messengers?

A. Well, I did not know that, only they were talking at that time about Wall Street. They claimed they were extra runners down in Wall Street.

Q. Did they say where they had been employed as extra runners? By whom?

A. Yes sir.

Q. What did they say?

A. They said they worked for Halle & Stieglitz. They know the head runner up there.

Q. One of them worked for Halle & Stieglitz?

A. Both of them worked for Halle & Stieglitz. The head runner knew them.

Q. Do you know the names of those boys?

A. No sir, I don't know. I don't remember their names. He has got that down; they were up here.

Q. Did you have any talk with them about bonds or securities?

A. Yes sir. That very day they went downtown.

Q. What arrangements, if any, did you make with them?

A. They went downtown; they knew another head runner, at 680 50 Broad Street, or I think—it was not 50; it was on the same side as 25 Broad. I think it was forty—I can't tell you the number. It was right in the same building with the Thompson Restaurant.

Q. Do you mean by some brokerage office that was in the building with Thompson's Restaurant?

A. They have got that.

Q. What arrangements, if any, did you make with those boys?

A. They were to get stocks.

Q. Where were they to meet you, or turn them over to you?

A. We hadn't come to that yet, because we didn't have any stocks.

Q. Did you tell them that if they could get them you could dispose of them?

A. Yes sir.

Q. And they would get cash?

A. Well, they would have to go to Canada before they would get it.

Q. They would have to go to Canada?

A. Yes sir.

Q. Who suggested that it would be necessary for them to go to Canada to get any money, and not get it here in New York?

A. Furey did. He said it would be better to keep the boys in Canada; because they could have protection up there in Canada, in some small town, and have protection there.

Q. They could go to school, or something, there?

A. Be put in some institution up there in Canada.

681 Q. And it would be difficult for the Authorities to locate them up there. Was there anything said about that?

A. Yes.

Q. What was said about that?

A. He said he would put their money in their name in a bank, and they could draw so much money a week.

Q. Did he say anything about them communicating with their relatives?

A. Yes; could get in touch with their relatives and send them money, and tell them that the boys were all right, and everything like that.

Q. And allay their anxiety?

A. Yes sir.

Q. Were there arrangements made with other boys?

A. Well no, only those two boys. We went downtown—this boy said he was working for a Curb broker; only handles Curb stocks. Of course, they are all small stocks; they are not on the Stock Exchange—

Q. (Interrupting.) It is harder to dispose of them?

A. Yes sir.

Q. Banks don't take them as loans, and so forth?

A. Yes. He said "I know a fellow by the name of Murray Fox", or "Murray Abramowitz; he works for Parrish & Company; he works for a few houses."

Q. Who said that?

682 A. That party down there. I didn't have such a conversation with him; the other two boys talked to him; I didn't want to talk to him. I told the other two boys to talk to him, because they knew him.

Q. What happened?

A. I went over to Parrish & Company and met Murray Abramowitz downstairs.

Q. In the hallway of their building?

A. Down in the basement, where the Subway is.

Q. What was said between you and Murray Abramowitz?

A. They introduced us; and then we went down, and went up—
town on the train.

Q. That was in the day time?

A. That was in the night time.

Q. On the way home?

A. On our way home, yes sir. We don't go home; we got off—
we got off at 42nd Street.

Q. And did they spend a little time with you?

A. Yes sir; I think we had something to eat.

Q. Where?

A. In a restaurant on Sixth Avenue.

Q. And was Furey there?

A. No sir; he was up in the room.

Q. But you saw him later?

A. We saw him later; I, with Murray Fox.

Q. Did you bring about their meeting?

682½ A. I brought about the meeting.

Q. And was the meeting up in Furey's room in the
Argonne Hotel?

A. No sir. In the Claridge.

Q. In the Claridge?

A. Yes sir.

Q. Whose room?

A. Kean's room.

Mr. Furey: Who was it that you brought up there?

Mr. J. Gluck: Murray Fox.

Q. You met him in what room of the Hotel Claridge?

A. Claridge Hotel, Room, I think it was 1001, or 1000. As
you get off the elevator it is right at your left.

By Mr. Myers:

Q. Whose room was that?

A. Kean's room.

Q. How do you know that?

A. I saw the register; and the clerk, O'Brien, told me.

Mr. Myers (addressing Mr. Kean): That was not the same room
that you were occupying about two weeks ago, was it, Mr. Kean?

Mr. Kean: No; 1011.

Mr. Furey: Did you see the register in the Claridge Hotel?

Mr. J. Gluck: Yes.

Mr. Kean: 1001 was the number.

Q. Was Kean there that night?

A. Yes sir.

683 By Mr. Dooling:

Q. What happened when you got up to Kean's room? What was
and done?

A. I told Murray Fox to wait outside for a moment.

Q. You left him out in the hall?

A. Yes sir.

Q. And when you went in, who was present, and what was said and done?

A. Kean and Furey was present. I told them I had a boy here that works down in Wall Street. And I brought him in there.

By Mr. Myers:

Q. What was said after that?

A. I introduced him to Kean and Furey.

Q. Did you tell them where he was employed?

A. I told him he was employed by a house downtown.

Q. What was said about getting stocks and bonds?

A. Well, I didn't do any talking, because Furey said he would do all the talking.

Q. Did he do the talking?

A. Yes sir, he did.

By Mr. Dooling:

Q. What did he say?

Mr. Furey: Let me ask him a question: When you brought him in, did you step out into the toilet and wash yourself?

Mr. J. Gluck: Yes.

Mr. Furey: Then you were not in there when the conversation took place?

684 Mr. J. Gluck: Oh yes.

Mr. Furey: You came right back?

Mr. J. Gluck: Yes.

Mr. Furey: How long were you outside?

Mr. J. Gluck: I was only in there a few minutes.

Mr. Furey: A few minutes?

Mr. J. Gluck: Yes.

Mr. Furey: How many minutes?

Mr. J. Gluck: Oh, about two minutes.

Mr. Furey: Two minutes? You went out there and washed yourself, and it took you only two minutes to do that?

Mr. J. Gluck: Yes.

Mr. Furey: That is all.

Q. What happened after that?

A. I think I came back into the room, and Kean wanted to do all the talking. He told him about having us to get stocks and bonds; and he had an outlet in Canada. He told him the whole story about the institution.

Q. Tell us what he said.

Mr. Furey: Don't leave nothing out, Joe.

Mr. J. Gluck: He said he had an outlet in Canada, and it was the safest proposition. He had a big politician in back of

him.

Q. In Canada or here?

A. In Canada. There was a man here in New York also that he had. At the time, he explained about a woman that had her husband over on Blackwell's Island, right over the River here, and that man got the prisoner out for \$1,000—by the woman paying that man \$1,000, he got him out.

Q. Did he mention the name?

A. Yes sir.

Q. What name?

A. Moray.

Q. Morey?

A. Moray.

By Mr. Myers:

Q. John J. Morey; M-o-r-e-y?

Mr. Furey: Moray he said; he didn't say Morey.

Mr. Dooling: He don't know how it is spelled, of course.

Q. M-o-r-e-y; is that how to spell it?

A. I never met him. He said "I am doing this now, and I want you to do just as I say, if you wanted to do this."

Q. Did he then outline his plan?

A. Yes.

Q. What plan did he outline?

A. He told him to get a good bunch of securities; he said "Don't take less than three or \$400,000 worth of securities, because it would not pay. If you don't get it to-morrow, wait until the next day until you get a large quantity of it."

By Mr. Dooling:

Q. In other words, he wanted them to wait until they had the delivery of a large quantity of valuable securities?

A. Yes sir.

Q. Not to take a few, five or 10 certificates for 100 shares each?

A. That is right, yes sir.

Q. Did he point out to the boy in your presence and hearing, what, if any, protection would be given to the boy?

A. He told him he would be put in some institution over there, and go to school over there, and put all his money into a bank, under his name.

Q. To be safely invested?

A. Yes. He would be there when the money comes in, and he would draw so much money a week, and he would notify his parents.

Q. Did he say what advantage that would be to the boy? That he would have funds when he came out?

A. He would be there for a few months, until the thing blew

Q. When it blew over, what was going to be done?

A. He could come out, and go somewhere, out in the West somewhere, and buy a business.

Q. With the money?

A. With the money.

Q. Was there anything said about the fear or danger of arrest?

A. Well, no; there was not said nothing like that; all the protection in the World out there.

687 Q. There would be all the protection in the World in Canada?

A. Yes sir.

Q. Was there any suggestion at all as to when you would go to Canada?

A. As soon as they got the stocks.

Q. The same day, or a week later, or what?

A. If they were to get the stocks, they would go the same night. And Furey was to go up himself and get the railroad tickets; as soon as they got the stocks he would buy the railroad tickets right away, and shoot right uptown.

Q. In what part of the City were they to board the train?

A. 125th Street.

Q. Not 42nd Street?

A. No sir; 125th Street Station.

Q. Was there anything said about why they would board the train at 125th Street and not 42nd Street?

A. It would be more safe up there.

Q. It would be safer up there, and not so conspicuous?

A. Yes sir.

Q. What else was said about making plans? Was there anything said as to who would accompany the boy or boys?

A. Yes.

Q. Who?

A. Murray Fox said that he could get quite a few boys working down there.

688 Q. Have plenty?

A. Yes; will have a number of boys down there, and make a good haul. So he told me—I told him about my brother getting stocks before. He said he could get my brother a job down at Parrish & Company.

Q. That Murray Fox could?

A. Yes sir.

Q. As an extra?

A. As an extra. We made an appointment at 106th Street one morning; that is just around where he lived; I think 106th or 110th Street.

By Mr. Myers:

Q. On the East Side?

A. East Side Subway.

Q. Did your brother meet him?

A. Not just then; we did not meet him at all; he was not there.

Q. Did Murray say anything about who the other boys were? What firms they were connected with?

A. What other boys?

Q. That he was to get to cooperate with you.

A. My brother; and the other two boys didn't want to bother with it; they didn't like the idea of going to Canada.

By Mr. Dooling:

Q. Did he say what firms it would be possible to get other boys in?

A. Parrish & Company; Halle & Stieglitz.

Q. Anything about Harriman?

889 A. No sir; nothing about Harriman.

Q. Was Clark, Childs mentioned?

A. No sir; none of them houses were mentioned.

Q. Just Halle & Stieglitz?

A. Yes. They could work there, and my brother could get a job with Parrish & Company; Murray Fox worked for a couple of houses.

Q. He was doubling up, wasn't he?

A. Yes; as an extra he said he could work for two or three houses the same day, or more, and he could get them, and take them from all the houses.

Q. What was done after that?

A. We were down there to meet him, but he was not there.

Q. Did Kean say anything that night in your presence and hearing, as to who would meet Furey and Murray Abramowitz? What did Kean say?

A. Well, he didn't have much to say, because Furey would not let him talk much; he wanted to do all the talking.

Q. Kean looked wise; is that it?

A. Well, he did say a few things; I can't just remember what he said; about, he said, "How are you going to get this stock?" And all that. And he said "Don't you think there is a slight chance of being caught taking it?" And Murray Fox said "No, there is no chance of getting caught, because the people I am working for give me stocks, and I go right away. When I get 690 enough stocks, just go right away."

By Mr. Myers:

Q. Was there anything said, that it would not be discovered until two or three hours afterward?

A. They would be discovered about a couple of days afterwards, when the checks did not come in for those stocks, when the boy was missing.

Q. That would give you a chance of two or three hours to get away in?

A. Yes sir. We did not meet Murray Fox then, and we just let him go. The next day Furey called up and said "Murray Fox

wants to meet you downtown at 71 Broadway, with your brother. He is going to put your brother to work." I went downtown there, to get my brother in Parrish & Company. But they didn't hire him; we could not get my brother working there.

By Mr. Dooling:

Q. They did not need any extra runners that day?

A. No. The head runner told him to stick around.

Q. Who was the head runner?

A. I don't know, sir.

Q. Was he in on it?

A. No; not as far as I know. We then—they didn't do anything that day at all, until——

By Mr. Myers, interrupting:

Q. What day was that? Was that the third day after you got back?

691 A. I can't remember; the third or four or fifth day.

Q. It is important to fix the date. You got back here on the 4th, did you?

A. Well, it took about four days before we could get them—it was about February 8th that we began, about the 8th or 9th.

Q. You were arrested on the 10th?

A. I was arrested on the 10th; that was about the last day—the next day.

Q. The 8th was a Sunday; so that if you got back on the 4th, then you had the fourth, fifth, sixth, and the seventh was a Saturday.

A. Well, I did not mention one day that Furey and Kean were down at the Woolworth Building.

Q. Tell us about that day; the first day they were down there.

A. Kean mentioned that time, the best thing for me to do was to stay uptown; because I was known down in Wall Street, and they might grab me down there. He said "The best thing for you is to stay uptown." He said "It would not be best for you to be downtown at all." Furey said: "It is all right; there is nothing going to be said. He can come down."

Q. Who said that?

A. Furey. Well, it was not my business to be down there. Well, I made an appointment with my brother to go down there; my brother was not working; so I went up to Kean and I said
692 "Are they back yet?" He said "No, they are not back yet."

I went down there with my brother—or I met my brother and Furey down there already; I met them in front of the drug store; I think it was Riker-Hegeman; I am not sure; right one block down—one block south of the Woolworth Building. Furey was standing outside. My brother was also there. My brother said he didn't get any work. I said "All right, you go uptown." He said "No; I might as well stick around down here." Furey said he

expects Murray Fox to come back with two big loans amounting to over \$400,000.

Mr. Furey: I said that?

Mr. J. Gluck: Yes sir.

Mr. Furey: I said that Murray Fox was coming back with two big loans?

Mr. J. Gluck: Yes sir. I then told him I was hungry; and my brother and I went down to have something to eat, in a small restaurant.

Q. Was that on Barclay Street or Park Place?

A. Yes; the Woolworth Building was right opposite, right next to the Subway.

Q. Did Furey go with you?

A. No sir; he waited for Murray Fox, on the corner.

Q. In front of the drug store?

A. Yes sir.

Q. Did you see Kean around?

A. No sir; he was uptown that day.

Q. You thought he was uptown?

A. Yes sir.

Q. You don't know whether he was or not?

A. I don't know where he was.

By Mr. Dooling:

Q. Then what happened after you had your lunch?

A. I came back; he did not show up yet.

Q. Who did not?

A. Murray Fox.

Q. It was pretty cold too, wasn't it?

A. At that time it was not; I don't think it was very cold.

Q. Was Furey there when you came out from lunch?

A. Yes sir.

Q. Did he say anything?

A. He went away; he had something to do; and I stayed there.

Q. What did your brother do?

A. He waited on the other corner. I told him to go home; I said "No use for you to stay down." He said he had nothing to do; he might as well stay down. Furey then came back, and he said "Murray Fox not back yet?" I said "No." "I wonder what is keeping him? Go down and see." And I went down to see Murray Fox; and I met him right on the corner, at 115 Broadway, Parrish & Company's building. He said he would be up in about ten minutes with two loans. He said "Tell Furey to wait up there in the same place." I went back and told Furey that. We waited

around for a little while, and Furey said "The best thing is not to keep together." He said separate. "You go on another corner, and your brother on another corner." And we separated.

Q. Why did you make the Woolworth Building your headquarters? Was there any reason? Did they want to keep above Fulton Street?

A. Above Fulton Street; because it would not look so bad down there, as if you were standing around Pine Street or Wall Street.

Q. Did he say there were detectives down there?

A. That was understood, yes; we understood that.

Q. Was there anything said?

A. Well, Furey mentioned the Woolworth Building; made an appointment right by the Subway. I never knew there was a Subway there. I said "Is there a Subway there by the Woolworth Building?" He said "Yes; there is the Broadway Subway."

Q. What followed after that?

A. Well, we waited around the corner for about ten minutes, fifteen minutes; Furey said he was going to the drug store to buy a—

Q. A sound?

A. A sound. He went in the drug store to buy that sound; and just at that minute Murray Fox came up. He said "Joe, I
695 got some stock here in my pocket; take it out." I said "I don't want to take it out here; let's go in the doorway of the drugstore." I then took the stock out of his pocket. I never looked at it. I put it in my pocket. Then I go to Furey and I tell Furey, "I have got some stock. He will be up here in a few minutes with the rest." I stopped there talking to Furey for a minute; and I came out again—he said, Murray Fox said: "Wait here; I will be back in about ten minutes." And he talked extra loud. I said "Don't talk so loud." Just around the corner I saw a party, just hearing what we had to say. I later found out who it was.

Q. Who was it?

A. It was Detective Mindheim. I said "Don't talk so loud." He said "I will be back in ten minutes." And he talked still louder, and walked away—started to walk away. Just then Mindheim said "Just a minute." And got hold of me. He said "Give me that out of your pocket." I said "What?" He said "The stock." And he took the stock out of my pocket. I never had a chance to look at the stock. I didn't know if they were stocks. I took something out of Murray Fox's pocket.

Q. Was it in an envelope or loose?

A. No sir; it didn't feel like an envelope; I never looked at
696 it at all. He was close to me and I took it out this way.
(Illustrating.)

Q. Was it a thick bundle?

A. It was not thick; there was not much to it, I don't think. He said he would be back later. And Detective Mindheim grabbed me. And Murray started crying, and made an attempt to run away; but he didn't do it.

Q. But he didn't get away?

A. No; he didn't try to get away; nobody went to grab him. Furey was in the drug store at that time. All of a sudden I seen a lot of detectives closing in on me. Mayer comes over and he said "I have got you now." And just grinds his teeth. And he hit me in the jaw right in the street there.

Q. Were you trying to get away?

A. No sir. I was right against the wall, with Mindheim and Murray Fox, and all of them around us. I didn't make no attempt to get away. He said to me "Now, if you make an attempt to run away I will shoot you." I said "What do you mean, make an attempt to run away?" I tried to clear myself. I said "What's the matter? I didn't do anything wrong. He gave me stock to deliver." That is the excuse I made at that time. Well, I didn't know what happened to Furey.

Q. What did Furey do?

A. I didn't know anything what happened to Furey until
697 I was brought up to the Post Office Building, on the first floor.

Q. Did you see Furey?

A. I saw Furey up there later.

Q. Did you see Kean?

A. I didn't see Kean. Later on my brother came up—he was not there at the time; he was down town.

Q. Where did they pick him up, do you know?

A. I don't know, sir. I saw them bring him in. I don't know yet where they picked him up. He was down town; he was down below the dead line; he came up later on.

Q. Did Furey come in also?

A. Yes sir, Furey came in.

Q. Was Furey objecting to his arrest?

A. Well, when he got in there he told Mayer: "Come here, I want to talk to you." And they went outside. He took him in another room.

Q. That is Detective Sergeant Mayer?

A. Sergeant Mayer and Brown. Brown said "You want to fight?" Or something about fight; I don't know what it was about. Furey said "I can't fight; I got a sprained wrist."

Q. Furey told who?

A. Brown. Mayer came over to me and he searched me, and he gave me another wallop in the jaw, for no reason on earth.

Mr. Furey: He walloped you a number of times didn't he?

698 Mr. J. Gluck: That is all at that time.

Mr. Dooling (addressing Mr. Furey): Were you walloped,

Mr. Furey?

Mr. Furey: Positively not, or didn't try to wallop me. Both of them treated me like a gentleman.

Mr. J. Gluck: He stuck a gun up to him; treated him like a gentleman.

Mr. Dooling: Was Kean walloped?

Mr. Furey: Was he walloped? I don't know nothing about him.

Mr. J. Gluck: Furey was treated like a gentleman, with a gun up against him, and the chains on him.

Q. Chains?

A. Or bracelets, whatever you call them.

Q. Handcuffs. What happened to your brother?

A. Well, nothing happened.

Q. Was there any securities on him?

A. No sir; he didn't have nothing at the time; nothing at all.

Q. Were there any other messengers picked up?

A. Not that day. Murray Fox was the only one. He was crying all the time; nervous; smoking cigarettes all the time.

Q. Were you then taken to Headquarters?

A. We waited there for a half or three-quarters of an hour
699 I guess.

Q. Were you waiting for other boys?

A. No; until the patrol wagon came.

By Mr. Myers:

Q. Were you ever to Police Headquarters before that day?

A. Yes sir; I was there a month before that.

Q. Tell us how you came to go to Police Headquarters a month before, and what happened there?

A. My brother was picked up one day down there, by Mr. Mayer.

By Mr. Dooling:

Q. Detective Sergeant August Mayer?

A. Yes sir.

Q. For what?

A. He had a letter, he claimed to my brother, that we were on some Wall Street deal. And I was not down town at the time, and he wanted to know where I was. My brother said he didn't know at the time where I was. Somehow or other, I can't just remember, but he let him go, my brother. I was not away; I was in the auto exchange, with the car, with Furey up there in 53rd Street. He came there and told me.

Q. In person, he told you he had been to Police Headquarters?

A. In Headquarters. He said he was in Wall Street, and Mayer picked him up.

Q. Did he say he had been questioned?

700 A. He said he had been questioned, yes.

Q. Did you tell that to Furey?

A. I told it to Furey. He said "The best thing for you to do is go down there and clear yourself; they would not suspect anything, a young fellow like you."

Q. What did he tell you to say when you got there?

A. He said "Go down there and tell them you don't know nothing about it; and keep cool; and take everything you have got out of your pockets."

Q. Did you take the things out of your pockets?

A. Yes sir.

Q. To whom did you give them?

A. I had the car at the time——

Q. (Interrupting): To whom did you give the things that were in your pockets?

A. I gave them to Furey to hold for me.

Q. So you went down there with nothing in your pockets?

A. No sir.

Q. Did you follow his instructions when you got there?

A. Yes sir.

Q. Whom did you see at Headquarters?

A. I first called up Mr. Mayer and told him I would be down the next morning to see him.

701 Q. That you understood he was looking for you?

A. That I understood he was looking for me, and I would be only too glad to come down. He said "All right."

Q. Did you go?

A. I did go down, with Furey, in the car.

Q. Where did you leave Furey?

A. I left him some place right around here somewheres, in Lafayette Street, down there.

Q. Not far from Headquarters?

A. No; just one block to the south.

Q. Did Furey say he would wait there?

A. He would trail me and see if anybody followed me. He said "When you come out of Headquarters, walk up a few blocks, and I will trail you with the car." I gave him the things out of my pockets; and I went in to see Mr. Mayer. I had to wait a few minutes; I was there promptly; I came downtown about 10 o'clock—I made the appointment for 10 o'clock. I got down there half past nine. And I was waiting for him; he was not in yet.

Q. What happened when he came in?

A. Mr. Mayer said "Who is this; Joe Gluck?" I said "Yes sir." He called me over and he said "I have got a letter here." And he showed me the letter, printed in pencil: That Herbie Bunora, my brother and myself have been stealing stocks down in Wall Street; but nothing else; nothing proving how we stole them, or anything else. They understood that we stole stocks down in Wall Street.

Q. Do you know who sent that letter?

A. No sir; I never found out.

Q. You have some suspicion, haven't you?

A. No sir, I don't know; because this was long before—

Q. (Interrupting.) That is a month or more before your arrest?

A. This was long before we went to—

Q. (Interrupting.) The big deal?

A. The big deal, with Kean.

Q. Well, has it ever occurred to you who sent that?

A. I don't know. I tried to find out later. On the envelope it was the station, 160th Street. It might have been somebody in my house, or somebody like that, who has been listening on the 'phone.

Mr. Furey: You mean your own people, your own relations?

Mr. J. Gluck: No sir.

Mr. Dooling: He means in the apartment house.

Mr. J. Gluck: Yes; my own father and mother done it; sure.

708 Q. What happened when you got to Headquarters?

A. Why, Mayer showed me the letter. I said "I would

like to know who done that." I said "I don't know anything about any Wall Street deal."

Q. Did he ask you where you were working?

A. Yes, he asked me that. I told him I did work for Gilbert J. Postley, 7 Wall Street, but I had to quit, because I could not work inside; I had gas on the stomach, when I came back from France, and I could not work on the inside. I told him that he was very sorry to lose me.

Q. Were you then let go?

A. I went down to Mr. Mayer and explained I didn't know anything about the letter. If he would get the party down there, I would prove it to him.

Q. You were ready to meet him?

A. Yes. He said he didn't know nothing about it. He said "If you ever happen to know anybody who is in that deal," he said, "there is a big reward offered."

By Mr. Myers:

Q. Did he say how large a reward?

A. No. He said "I will see that you get some part of that reward." I said "I would be only too glad to." He said "All right Joe, and he shook hands with me, and I walked out. I never turned around to look at Furey, but walked up a few blocks, and he came along with the car, and I hopped in the car and went uptown.

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By Mr. Dooling:

Q. Did you tell Furey what happened there?

A. I told him. He said "The best thing in the world you done." He said "Now you are clear; you have got nothing to worry about."

Q. Did you tell him about the reward?

A. Yes, I told him about the reward.

Q. What did he say about that?

A. He didn't say anything. I told him, I said "There is a reward offered," and started laughing; took it as a joke; because I being the man that was wanted, he didn't know who I was.

By Mr. Myers:

Q. Did Sergeant Mayer tell you who was going to offer the reward?

A. No sir; he did not tell me that.

By Mr. Dooling:

Q. Did you ask him?

A. I never asked him; I didn't know the details. I said "I would be only too glad to; if I find out anything about that deal, I would be only too glad to take the reward."

Q. Didn't you ask how much the reward would be?

A. No sir; I don't think I ever asked that.

Q. You were not interested; you wanted to get away?

A. I wanted to get away, is right.

765 By Mr. Myers:

Q. Did Furey or Kean ever tell you of any stick up jobs that they had been engaged in?

A. Well, he told me that he turned off a lot of jobs with Kean.

Q. Which ones?

A. And shake downs.

By Mr. Dooling:

Q. Who did the talking, and tell us what he said.

A. Furey did the talking; what he done already.

Q. He was modest about telling it?

A. He showed me a building on Fifth Avenue where the party used to give him all these people to shake down, some detective or something; I don't know who it was. I don't know if it is the American Tobacco Company Building; on Fifth Avenue between 20th and 23rd Street—it was not a detective agency. It was a big tobacco building; the man had an office in there, that gave him all the information about these people who were doing crooked business, and it was his place to go down and shake them down.

Q. Did he say with whom, or how he divided what he got?

A. Yes; he said he divided it up—I don't know just what name.

By Mr. Myers:

Q. Did he want you to go in with him?

A. No sir, not at that time.

766 Q. Mention some of the stick up jobs he said he had been engaged in.

A. He never mentioned any names to me.

Q. Did he mention cities?

A. He just told me—oh, he told me about a Cleveland affair, where he went and got a party out of jail.

By Mr. Dooling:

Q. Did he say what he got for that?

A. He showed a mark where he was in a shooting affair. He said "If anybody double crosses me I croak them." That is all he said.

Q. Did he say what he got on the Cleveland job?

A. He said a man was in there, and Furey got him out of jail, and he double crossed him and beat it away.

Q. He didn't get anything in return for that?

A. He didn't get anything in return for that.

By Mr. Myers:

Q. What did he say about various cities where he had been on these stick up jobs?

A. That is all I can remember, that Cleveland job.

Q. Well, he mentioned some other city, didn't he?

A. I could not remember just exactly; I could not say.

By Mr. Dooling:

Q. Did he say anything about Binkowitz?

A. No; he didn't say anything about Binkowitz.

Q. Did he say anything about Binghamton?

A. No sir; never told me about Binghamton.

707 Q. Well, did Kean tell you of any that he had been engaged in?

A. No sir—oh, he told me he was playing shake-downs and all that, up there. He told me about some jobs he and Furey were in together.

Mr. Furey: You haven't left anything out, Joe, have you? Have you told it all?

Mr. J. Gluck: Yes.

Mr. Furey: How many times have you been over here?

Mr. J. Gluck: Over where?

Mr. Furey: Been interviewed by Mr. Dooling and Mr. Myers?

Mr. J. Gluck: About three or four, maybe five times; maybe more.

Mr. Furey: Every day, haven't you?

Mr. J. Gluck: No.

Mr. Furey: How many times have you been to the Post Office Building?

Mr. J. Gluck: About two or three times.

Mr. Furey: You are pretty well rehearsed; you have drilled it over pretty well?

Mr. J. Gluck: All this is the truth.

Mr. Furey: Have you been schooled by anybody?

708 Mr. J. Gluck: Schooled?

Mr. Furey: Yes.

Mr. J. Gluck: I don't need any schooling to tell the truth. I can prove everything I say.

Mr. Furey: Just let me ask this question: Have you been schooled by Mr. Myers or Mr. Dooling or anybody else in this office?

Mr. J. Gluck: Schooled?

Mr. Furey: Yes.

Mr. J. Gluck: To do this here?

Mr. Furey: Yes; have you been schooled by Mr. Mayer or Mr. Brown?

Mr. J. Gluck: No; nobody. I was told to tell the truth, and I was telling the truth.

Mr. Furey: You were pretty well slugged, you admit?

Mr. J. Gluck: I had three or four punches in the jaw.

Q. Were you ever slugged here?

A. I was not slugged here, no sir. Mayer hit me over in Headquarters; he hit me three or four times.

Q. Was he playing with you?

A. I went back to my brother and just laughed at it. I just told him I was sick; I could not walk. He said he would kick me in the crotch, but he never did.

Mr. Furey: Did he wallop you in the jaw?

Mr. J. Gluck: I said he walloped me three or four times.

Mr. Furey: That is all. It is a pack of lies he is telling.

Mr. Dooling: Let's see you prove him a liar.

Mr. Furey: What is the difference? What is the good talking about it? He has been schooled and everything else, for the last three months.

Mr. J. Gluck: If I have to bring down 100 people I can prove every statement I made. There is always somebody around that knows this here.

Q. Was there anything said by Mr. Furey or Mr. Kean, when you were arrested and brought to Headquarters, that they were acting in the public interest, or any other interest?

A. Furey just went like this all the time (placing finger to lips). "Keep quiet."

Q. He wanted you to bottle up?

A. Yes. When we were brought downstairs and had our finger prints taken, and they separated us, my brother and I, and they put Furey in a cell downstairs. And then my brother said he wanted to go to the toilet; so Mindheim said "You want to go too often. I will lock you in the cellar where there is one." So he locked him in the cellar. Furey later said to him: "Stand just kid; we will get Fallon."

Q. You will get Fallon?

A. He mentioned Fallon's name a couple of times before, a good lawyer.

Q. The lawyer?

A. Yes; he mentioned it a couple of times before.

Q. He wanted you to get Fallon?

A. He told that to my brother.

Q. That was when you were brought into the Criminal Courts Building, when you were in the pen downstairs?

A. Then we were brought upstairs again.

Q. Did he say anything there about your brother?

A. He brought him in the room there—Furey was downstairs all the time; he left me and my brother in the Second Deputy's Office there; he took my brother away from me, into Commissioner Lahey's office.

Q. At Headquarters?

A. At Headquarters. That was where we were, down in the cellar of Headquarters. Then he questioned my brother. Brown came out to me and he said "Joe, we are not going to fight any more." I said "Why?" He said "We are not going to fight at all. Everything is all right. Don't worry." And he patted me on the back. Then he showed me a grip which he took, with badges in, and a pistol, that he got from Furey's room. He

said "Now tell us all about the shake down." I didn't want to mention anything about the shake down at all.

Mr. Furey: He said he got that pistol and badges in my room?

Mr. J. Gluck: He had taken the bag check out of your pocket; I don't know where he got it.

Mr. Furey: He told you that, did he?

Mr. J. Gluck: Yes; of course he told me; I don't know otherwise.

Mr. Furey: You didn't know that I had a check in my pocket, or a gun or badges in my pocket, did you?

Mr. J. Gluck: No.

Q. You didn't have any check?

A. No.

Q. Your brother didn't have any check?

A. No.

Q. The gun and badges were not yours, were they?

A. No.

Q. And never had been?

A. No sir.

By Mr. Myers:

Q. What other names were mentioned at any time by either Furey or Kean, names of criminals?

712 A. Well, there was two men up there, I can't remember the names of the criminals; Eddie Mines; that is all I know; and this party here that was in the boat. (Indicating David J. Haines.)

Q. You mean Haines?

A. Yes sir.

Q. What names of other criminals were mentioned to you by Furey at any time?

Mr. Furey: Why do you say "criminals?"

Mr. J. Gluck: We went to Rector's one day, we had a little meal up there.

Q. You mean the restaurant?

A. Yes. He pointed out quite a lot of people to me, that were confidence men and wire tappers, he pointed out.

Q. Mention some of the names.

A. I can't remember any names.

Q. Did he seem to be familiar with them?

A. Yes; he knew all of them.

Q. Did he tell you something about their records?

A. One of the parties, he said something about Harry Furey, his brother, had been told to go away and hide. He said "They could not get Harry; he is too wise for them."

Mr. Furey: Tell some more, Joe.

By Mr. Dooling:

Q. Did he ever say anything to you about Charlie Druck-
713 ker?
A. Charlie Druckker? No sir.

By Mr. Myers:

Q. Did he ever mention Eddie Winkler's name?

A. No sir, not that I can remember.

Q. Don Lloyd?

A. No sir, not that I can remember.

Q. Jarvis?

A. No sir.

Q. Frank Ryan?

A. I can't remember any of those names.

By Mr. Dooling:

Q. Did he say anything about the Sullivan outfit to you?

A. Which Sullivan outfit?

Q. And Easterday?

A. He didn't know any of them at the time.

Q. You didn't tell him anything about that?

A. Oh, I told him about Mack and George. That is all I knew
714 then as I told him about Sullivan.

Mr. Furey: Can I ask a question right now?

Mr. Dooling: Yes.

Mr. Furey: Who was them two fellows, that Saturday afternoon
between two and 3 o'clock, they came out of the Astor Hotel, when
you said "There goes Mack and Joe;" who were them fellows?

Mr. J. Gluck: Mack and who?

Mr. Furey: Mack and George.

Mr. J. Gluck: Never said anything like that.

714 Mr. Furey: You never told me that?

Mr. J. Gluck: Never. I never said it was Mack or George,
because I didn't see Mack or George for about two months. They
went away on that Sullivan deal.

Mr. Furey: You did not?

Mr. J. Gluck: I went up to Washer's Cafe, where they generally
go, 86th Street & Broadway, and described the parties to him. I de-
scribed Nick Arnstein—I didn't know him at the time by that name.
I just knew them by the names George and Mack.

Mr. Furey: And didn't you say to me then: "Mack and George are
back?"

Mr. J. Gluck: I told you that later on.

Mr. Furey: Did you tell me at the time? You said "There they
are now."

Mr. J. Gluck: No sir, I never told you that. I only said I met
Nick Cohen—Mack—he was up to my house. He called me up and
wanted to do business again.

Mr. Furey: Didn't you point George out to me, and Mack?

Mr. J. Gluck: I never pointed them out to you.

By Mr. Myers:

Q. When did you last see The Count?

A. That was the last time I ever saw him, when he
715 shook me down for stocks of \$85,000.

Q. Will you give us a little better description of Nick
Cohen?

A. Nick Cohen?

Q. Yes. Be very careful now. His height first?

A. I judge he is about six foot in height.

Q. Nick Cohen?

A. Yes sir, Nick Cohen.

Q. And his weight?

A. He is a pretty heavy fellow, about 200 pounds I guess.

Q. Does he stoop over; round shouldered?

A. Just a little bit; it is hardly noticeable. He walks erect.

Q. Does he walk as erect as Arnstein?

A. Yes, he does.

By Mr. Dooling:

Q. A good looking fellow, isn't he?

A. A good looking chap. But all the time I saw him, he has got
rings right under his eyes; he is a heavy drinker.

By Mr. Myers:

Q. What about his hair?

A. He has dark hair; black hair.

Q. Very thick?

A. Yes sir.

Q. Shiny?

A. Yes sir, I think it is shiny.

By Mr. Dooling:

Q. Glossy?

A. Glossy.

By Mr. Myers:

Q. Does he part it, or is it pompadour?

A. It is parted—he had it parted—he had it different when I
saw him last.

716 Q. Is he as tall as Arnstein?

A. Yes, he is tall—they are about the same height, but
not the same build.

Q. About the same height?

A. Yes sir.

Q. About the same weight?

A. No sir.

By Mr. Dooling:

Q. Cohen is heavier, isn't he?

A. He is about 50 pounds heavier, I should judge.

Q. Cohen is heavier?

A. Cohen is heavier.

By Mr. Myers:

Q. Cohen is 50 pounds heavier than Arnstein?

A. Yes sir.

Q. They both walk very erect?

A. Yes sir.

Q. Have they both got large noses?

A. Yes sir, they have.

Q. Very prominent?

A. What do you mean by very prominent?

Q. Long; protruding?

A. Yes sir.

Q. Have they got large eyelashes, either one of them?

A. Yes; Nick Cohen has. And Arnstein, his checks are sunk in just a little; and he has one of these here English mustaches.

Q. Is there any cut on the face of either one?

A. I am not positive, but I think Nick Cohen had a cut—I am not certain of it, just where he had it. But as far as I can remember,

I think he had a cut on his face somewhere. The pictures
717 that you have are positively them; there is not doubt about that.

By Mr. Dooling:

Q. After you were brought to Headquarters and you were brought to Commissioner Lahey's office, you were afterwards brought to the Criminal Courts Building weren't you, this building here?

A. Yes, we were brought here.

Q. And you were downstairs in one of the detention rooms, were you not?

A. Yes sir.

Q. A big room. Furey was there, and you and your brother?

A. Yes sir.

Q. What was said, if anything, to you, at that time by Furey, in relation to making disclosures to the District Attorney?

A. Well, he said he was going to stand pat. And I told him about the shake down. He said "Why did you tell them that?" I said "They knew all about it." Because he mentioned the shake down to me. I was not going to mention the shake down at all at first.

Q. Who mentioned it?

A. Mayer did.

Q. Mayer seemed to know——

A. (Interrupting.) No sir; Brown mentioned it.

Q. Did Brown tell you where he got the information from?

A. No sir. I tried to find out from him, but he never
718 told me.

Q. He did not say anything about Kean having given the information?

A. No sir; he never told me about Kean.

Q. What did Furey say to you about standing pat, or taking a plea and telling the District Attorney?

A. He said "Stand pat." He said that in there. Then he did mention, a little later, that it looked a little bad now. He said "Don't mention me in the stock deal at all. I didn't have anything to do with the stock deal."

Q. He wanted you to protect him?

A. Yes. He said "Don't say I had anything to do with the stock deal."

Q. Did he say anything about your being a young fellow, first offense, and what would be done to you at the worst?

A. Yes. Before we got caught, he said "Boys, if there should be any—if any of us should be dropped," he said, "picked up"—

Q. (Interrupting.) Anyone what?

A. "If any of us should be picked up", he said he would take the blame; because he has no people; we had a mother and father to protect. He said he would take the blame. And he said he had no people, so he would just as well go to jail for us all. That is what he said.

Q. After you were picked up what did he say to you?

719 A. Well, he asked me what I said to him. I didn't tell him exactly what I said.

Q. Did he say anything about a lawyer?

A. He did mention Fallon.

Q. Downstairs?

A. Yes sir; he did mention Fallon's name.

Q. Did he want you to retain Fallon?

A. Yes, he did want me to retain Fallon.

Q. Did he say anything about pleading guilty?

A. Pleading guilty? Not just then, no.

Q. Did he later on?

A. Yes sir; he told me later on to plead guilty and go away, and not come back on the extortion charge. He said "You don't have to return after that; that will clear me, if you are not here."

Q. That will let him out?

A. Yes sir.

Q. Did he say he would do anything for you, if you did that?

A. Yes; he said he was going to plead for me; he was going to say for my brother and me—he said he was coming here—he said "When you hear it, Joe, you will die laughing. I am going to say that you boys are involved—that you are just tools for this syndicate of Wall Street firms", or something like that; I could not just remember.

Q. For a syndicate?

A. For a syndicate.

720 Q. Of Wall Street brokers?

A. "Of Wall Street brokers, that used you as tools", he said, "and I will mention—I won't say anything at all about that trip." The way he said, "Don't mention anything"—he said "The best thing, don't mention about the extortion charge; only keep your father away; send him out of town for a couple of weeks." So that he would not appear against him on the extortion charge. I should plead guilty right away and would not get much, he said. He did not mention what we would get each.

Q. What did he say each of you were going to get, at the worst?

A. He said—he changed it—first he said two to five years. Rudie Bunora, he says, and my brother, will get Elmira; Fox will get Elmira. He said "We are sure in for five years."

Q. Who?

A. Furey and I. That is the statement he made.

Q. You were sure for five years; maybe less?

A. Yes sir; and Rudie would get—

Q. (Interrupting.) Did he say anything to you at this time as to what Kean was doing to help any of you?

A. He said "They ain't got Kean." He said "I wrote a letter to Kean."

Q. What did he say?

A. He said "Don't mention Kean's name at all."

721 By Mr. Myers:

Q. You wanted to protect Kean?

A. Yes. That is why I only gave the name of Jim at first.

Q. You were really trying to carry out his instructions; you knew all the time that his name was Jim Kean, didn't you?

A. Yes; I knew all the time it was Kean.

Q. You were carrying out his instructions?

A. Yes sir.

By Mr. Dooling:

Q. Was there anything said at any time to you about standing pat, and by doing so that Nick Cohen could be shaken down?

A. Oh yes. He said "If you stand pat, we can get between 50 and \$75,000; but I am entitled to some of it, at least 15."

By Mr. Myers:

Q. Who did he say he could get that from?

A. From Nick Cohen, he could make connections.

Q. He could make connections and shake down Nick Cohen?

A. Yes. He said "Deny all your stories about Nick Arnstein"—after I made the confession he said "Deny it all, and you can get money for it." I said "I will think it over." Furey said that, and I said "I will think it over."

Mr. Myers: Why did you say that, Mr. Furey?

Mr. Furey: I never said anything—wasn't we separated between

two guards, between Mayer and Brown, and you sent into one cell——

722 Mr. J. Gluck (interrupting): This was down at the Tombs. You were on the first floor——

Mr. Furey (interrupting): Wait a minute——

Mr. J. Gluck (interrupting): I am answering that. You were downstairs. I said we were together one time. That is true. We were together one time; and one time we were separated. We were twice. We were up together once; and once he was separated, in one cell, and the four of us in another cell.

By Mr. Dooling:

Q. Where was that; in the Tombs?

A. No; in this building here.

Mr. Furey: Did Mayer and Brown, downstairs, before we came up to Court that day, separate us, putting me in one cell over there and putting you in a big cell?

Mr. J. Gluck: In Headquarters, yes.

Mr. Furey: When we came down again, didn't he separate us again?

Mr. J. Gluck: No sir; that time he kept us together.

Mr. Furey: You mean to say he kept us together?

Mr. J. Gluck: One time he did keep us together.

Mr. Furey: Weren't you put upstairs, separated from me?

723 Mr. J. Gluck: I was put on the second floor; you were put on the lower floor.

Mr. Furey: After you made your confession, you understand what I mean, told everything that you know—in fact, told more than you know—have I ever talked to you since then?

Mr. J. Gluck: Yes.

Mr. Furey: You are a God damn liar.

Mr. J. Gluck: He also talked to Rudie Bunora, and told Rudie Bunora, whatever I should say he should come back and tell Furey. Rudie told me what he said. Rudie was on my side all the time. My mother send a letter to me, and before it got to me—it was given to a trusty in the Tombs—and before it got to me, it was sent to Furey. Because Furey told Rudie Bunora that he saw the letter before it came to me. There was nothing in the letter that amounted to anything; but it was sent to him anyway, before it was sent to me, my own letter.

Q. Do you know who that trusty is?

A. I don't know, sir. Furey told that to Rudie Bunora himself.

Mr. Furey: That is an absolute lie.

Mr. J. Gluck: He told Rudie Bunora that. Furey thought he turned over on Furey's side; but all the time he just made

724 believe he was; and he came back and told me everything.

By Mr. Myers:

Q. Why is it that you have allowed Furey to threaten you this way all the way through? What has he got on you?

A. Nothing; he didn't exactly threaten me; he didn't threaten me in any way.

Q. You have been carrying out his instructions right up to a few days ago, haven't you?

A. Well, I didn't carry out his instructions.

Mr. Furey: Have I threatened you in any way at all?

By Mr. Dooling:

Q. How about Jim? You concealed Kean's name.

A. I just did that. There was no threatening about it.

By Mr. Myers:

Q. He asked you to do it, and you did it?

A. Yes sir. Later on he did mention; he said if I was to go back on him Adler and him were going to go up and say I bought my people a house in Mount Vernon, and put somebody in the laundry business, and put my father downtown; he said he was going to do that.

Mr. Furey: Didn't you buy them?

Mr. J. Gluck: No.

Q. Did he say what would happen to you after you got out, if you squealed?

A. No; he didn't say anything about what would happen to me after I got out and squealed.

Q. Any threats made against your family?

A. No sir; there was no threats made against my family.

Mr. Furey: You told the truth for once.

By Mr. Dooling:

Q. When he said he had written a letter to Mr. Kean——

A. (Interrupting.) He then came back and told me that Kean double crossed us.

By Mr. Myers:

Q. Did he say what he had written in that letter to Kean? Whether he advised Kean to bottle up, or do something, or not?

A. Well, I don't know what he did write.

Q. He did not tell you what the contents were?

A. Oh, he said about The Count. He said "Don't mention anything about The Count, and the stocks." He said "I told you all along I didn't know the right name of The Count; but I know him

all along. I know him, Joe." He said "By God, if he don't come across with the stocks or the money, I will croak him."

Q. He said he would croak who?

A. The Count.

Mr. Furey: You mean I told you that after you confessed?

Mr. J. Gluck: Yes. He said I should not tell anything
726 about The Count.

Mr. Myers (addressing Mr. Furey): What is the name of The Count?

Mr. Furey: I don't know The Count; and he lied when he said it.

Mr. Myers: Mr. Furey, don't you know the man they refer to as The Count?

Mr. Furey: I do not; positively do not.

Q. Was there anything said by Mr. Furey as to why he didn't want The Count brought in, or why he didn't want Kean brought in; that if they were left out they might do something from the outside to protect you?

A. He said he expected to get out on bail pretty soon; he said he would come back and give me the money that he owes.

By Mr. Dooling:

Q. Did he say where he was going to get bail? Who was going to go on bail for him?

A. He said his wife has got a woman friend going to come down to Court there—I don't know her name—was going to furnish bail for him. His bail would be knocked down to \$5,000 on the extortion charge, and \$5,000 on the bond charge, I think it was. He said if it was knocked down to that he expected to get out on bail any day. He also promised some money when he got out.

727 By Mr. Myers:

Q. Do you know whether Furey knows Cohen?

A. Nick Cohen? No sir.

Q. Do you know whether John J. Morey does?

A. Not that I know of. I never met John A. Morey; I just heard his name mentioned.

Q. You never met Morey?

A. I never met Morey.

Q. Did Kean or Furey ever tell you whether they knew Nick Cohen?

A. No sir; never told me.

By Mr. Dooling:

Q. What did they say to you about Arnstein and Cohen and Sullivan?

A. Well, he said: "If you just change your story, they can't hold you for perjury."

Q. Why?

A. He said that to me; I don't know why. He said "They can't hold it on you; just deny your story. You can't get more than five years; take your bit. We can get 50 or \$75,000. I don't care; if you give me 15 or \$20,000, I will be satisfied."

Mr. Kean: You asked a question: Did Kean and Furey——

Mr. Myers (interrupting): Do you want to ask some questions of this man, Mr. Kean?

Mr. Kean: No, but you used the word "they" in a question.

Q. Did he say he wanted Kean's and The Count's names left out, and they would protect you and render help from the outside?

A. Yes; he said "Listen, Joe: I expect to get——" he called me down one day, just before I went to Court, and he said "Come down and see me in my cell before you go." Well, I did go down to his cell before I went. He told me, he said "Listen, Joe: I find out you are not going to get more than a year. I got a big man working, in a big case; I am not going to tell you who it is; but you can take my word: You are not going to get more than a year." He said "I have got a man with big influence working on the case."

Q. Did he tell you who he was?

A. No sir; he did not mention no name then.

Q. He was trying to kid you into believing that by standing pat you would only get one year?

A. I don't know if he was trying to kid me or not.

Q. That was at the time we were sending for you to come over here, trying to get the entire truth?

A. Yes. I am not sure if he was kidding me or not; that is what he told me.

Q. What did he say about Kean and what Kean was doing to help you and him from the outside?

A. Later on he told me that Kean double crossed us.

Q. How did he refer to Kean when he spoke of him as having trouble crossed him? Did he speak of him in a kindly way?

A. No. He said several times: "I will get back at him; I have got a lot of things on him that will hang him."

Q. Hang Kean?

A. Yes. He said "I got a lot of things on him." He said "I can get back at him."

Q. Did he say anything about Haines?

A. No sir, he never mentioned Haines' name to me; he only mentioned Kean. He told me Kean was over in Ludlow Street jail. I found out later he was in the House of Correction.

Q. The House of Detention?

A. Yes sir. He also stated to me that he was up here until one o'clock one morning, but I should not say anything, if they ask me about it; that he didn't tell me about it.

Q. Did he say whether he told us the truth?

A. No sir. He said he denied everything. He said he didn't say anything about Cleveland. He said "Joe, here is my hand; I like you." There was a friend of mine there, one of the boys around heard him say that; McDonald; he was around at the time he said it. He shook hands with me and he said "Joe"—he even mentioned he thought I was a good fellow, and all that. He said "I haven't got anything against you. And you can save me a lot of trouble by just keeping out of the extortion charge. Don't go against me on the extortion charge." I said "How can I?" He said "If you plead guilty you will get sent away, and when once you are away you don't have to come here to appear against me, and it will be thrown out." He said "An offer was made to me, if I would come clean on this here bond question, the extortion charge would be dropped."

Q. You know how I make promises, don't you?

A. Yes sir. That is the agreement, he said to me. He said I should not say anything about it.

Mr. Furey: Did you dream that?

Mr. J. Gluck: I am telling everything that happened.

Mr. Furey: You mean to say that after I knew you stooped on me, I went over and talked to you?

Mr. J. Gluck: Well, you didn't know at that time.

Mr. Furey: I didn't know that you stooped on me?

Mr. J. Gluck: Yes.

Mr. Furey: I have got your minutes from the Court. You are a liar, Joe Gluck; I wouldn't shake hands with a rat like you.

Mr. J. Gluck: There was McDonald there at the time.

731 Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

732 UNITED STATES OF AMERICA,
Southern District of New York, ss:

JULES W. ARNDSTEIN, Respondent,

vs.

THOMAS D. MCCARTHY, U. S. Marshal, Southern District of New York.

Habeas Corpus.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of part II of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this fourth day of April, in the year of our Lord

one thousand nine hundred and twenty-two and of the Independence of the said United States the one hundred and forty-sixth.

[Seal of the District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, JR.,
Clerk.

733 RUDOLPH BUNORA, being first duly sworn by Commissioner Gilchrist, testified as follows:

Examined by Mr. Myers:

Q. What is your full name?

A. Rudolph Bunora.

Q. Where do you live?

A. 937 East Tremont Avenue, Bronx.

Q. How old are you?

A. 23.

Q. Married or single?

A. Married.

Q. Do you know this witness, Harry Wolf (indicating Harry Wolf)?

A. Yes sir.

Q. How long have you known him?

A. Only a short while.

Q. Well, when did you first meet him?

A. I met him the end of last Summer.

Q. How did you meet him; through whom?

A. Well, through going around—I used to frequent a cabaret down on Longwood Avenue; that is how I happened to meet him; just a mere, like a coincidence, you might call it, in this case anyway.

Q. Do you know Alfred Fitz Roy?

A. Yes, sir; I know him, but not so well.

Q. Through whom did you meet him?

A. I knew him before I met Wolf.

Q. Well, did you meet Wolf through Fitz Roy?

A. Why no; I don't think so.

Q. Well, you met Fitz Roy first?

A. Yes, sir; I knew Fitz Roy.

Q. Did you know him in the Army?

A. No; I didn't know him in the Army; but I just knew him from being downtown.

Q. Did you know him before you went in the Army?

A. Yes sir.

734 Q. Well, did you work in any broker's office at any time?

A. Yes sir, I did.

Q. Where?

A. Oh, a number of firms.

Q. Mention the names.

A. I worked for Clark, Childs & Co. That was the last position I

held. And I worked for A. Lincoln Eglinton & Co., 43 Exchange Place. I have worked for several houses.

Q. Mention the names of all the houses for whom you have worked, brokerage houses.

A. Well, there were a lot of houses I only worked a couple days; that is, as an extra runner. Those were the two main jobs I had down there.

Q. Well, mention them.

A. I can't recall lots of them. I worked as an extra for Hornblower & Weeks. I worked extra for Shuman & Seligmann, 30 Broad Street. I worked extra for Arthur Lipper, 67 Exchange Place. They are only for a few days at a time. I can't just recall all of them.

Q. What other positions did you have?

A. As a runner at that time. I started as a runner, and I became a clerk.

Q. Under what circumstances did you meet Fitz Roy?

A. I happened to—I used to meet him every day pretty near.

Q. Was he working in the same line of business?

A. No, sir, that I could not say.

Q. What business did he work in?

A. I could not tell you.

Q. How did you meet him; where and when?

A. Just like—well, I will tell you: It is the custom down in the Street, you see familiar faces every day, naturally you are going to say "Hello."

Q. I am asking you: Did he work down in the Street?

A. I could not say. I guess he must have had some kind of work to do down there, anyhow, because he was always down there.

735 Q. You must have known where he was working?

A. No sir, I did not.

Q. You never asked him the nature of his business?

A. No sir; he always used to hang around.

Q. Did he not have any employment?

A. Not that I know of. He may have been working, and he might have been hanging around just when I came around.

Q. Did he have a criminal record at that time, to your knowledge?

A. No, sir, not that I know of.

Q. Do you know whether he ever served any term in prison?

A. I don't think he did. He didn't seem to be that kind of a fellow.

Q. But he was not working, was he?

A. I could not say whether he was working or not.

Q. If he was working, you would know where he was working, wouldn't you?

A. I guess I would.

Q. He was a good friend of yours, wasn't he?

A. No; not exactly a friend of mine.

Q. You went about with him a great deal, didn't you?

A. No; I didn't go about with him.

Q. You met him every day, didn't you?

A. Nearly every day—I will tell you how it happened I used to meet him. I used to sing in a quartet, right around the corner of the Continental Bank, it used to be the old German National Bank; during my lunch hour, for the past four years I have worked down there; we used to practice harmonizing.

Q. Was Harry Wolf in that quartet?

A. No sir.

Q. Or Joe Gluck?

A. No, sir. I was the only one implicated in this case that was in that quartet.

Q. Or Fritz?

A. No sir, he was not; but he used to come around and listen to our songs, the same as everybody else used to do. So naturally, 736 he used to hang around, maybe the last one or so, and I used to get talking with him.

Q. Did you go out with him in the evening?

A. No sir never did.

Q. Did you ever go out of town with him?

A. No sir.

Q. Do you know where he is now?

A. No sir; I could not say.

Q. When did you see him last?

A. I just can't remember when I saw him last, because——

Q. (Interrupting.) Well, about when; last Christmas?

A. I could not very well answer that question.

Q. Have you seen him since last Christmas?

A. I would not say yes or no, because I am not sure.

Q. Well, what is your best recollection on the subject?

A. The last time I saw him I think was when he just came out of the Army.

Q. When? That was last April?

A. I think so; some time about there.

Q. You have not seen him since last April?

A. Yes; I have seen him once in a while; but you see, I can't recollect when I saw him.

Q. Didn't you see him last summer?

A. Well, that was last summer.

Q. Well, did you see him in July or August?

A. Yes; I saw him when I went down for Mr. Gluck.

Q. What was your first connection with these bond thefts?

A. Well, I didn't have any connection with the thefts at all. What I did, I got a bond from Joe Gluck; he told me he found it——

Q. That is Joe Gluck who has just testified?

A. Yes sir.

Q. What bond was that?

A. He says to me——

Q. (Interrupting.) (Question repeated.)

737 A. That was a Missouri Pacific bond; 1,000 dollar bond. I could not tell you the market price at the time. And he

said to me "Rudie, I found a bond. Do you think you could dispose of it?" I said "No, not myself." I said "Maybe I got a friend, maybe he could do something, see?" So I went down to Mr. Wolf's store to see Harry Wolf. I said "Harry, I have got a bond here that was found." I said "Do you think you could get rid of it?" He said "Gee, what makes you approach me on them things?" I said "Well, I am just taking a chance." He said "Well, I don't know whether I can get rid of it or not." He said "Leave it here. A found bond?" I said "Yes." So he took the bond from me. He said "Come back in a day or so, maybe I can get rid of it for you. If I can't, I will give it to you back." So I went there I think a couple of days after: "Yes," he said, "I can get rid of the bond for you." So we made some kind of an arrangement on the price; I can't just recollect what. He said "I will get you \$300 for it." So I said "All right." I then told Mr. Gluck what he said. I went back the following day and I got \$300 from him in the store.

Q. Was that in bills?

A. Yes; three 100 dollar bills.

Q. Was anyone present when you received that money?

A. No sir. I was the only one present at the time he gave me the money.

Q. Can you fix the month? Was it near the 4th of July, or near Decoration Day?

A. I don't remember the time. It was in the early summer—either the latter part of spring or the early part of summer. I know the weather was warm anyway.

Q. Can you fix it in relation to the 4th of July last year?

A. No sir.

738 Q. Can you fix it in relation to Decoration Day last year?

A. No. I guess it was around either April or May or June; either one of those months; I can't just recollect.

Q. What did you do with that \$300?

A. I gave it to Joe Gluck.

Q. Did he give you any of it?

A. Yes sir; he gave me \$100 back.

Q. Do you know what became of the other \$200.

A. He gave \$100 to his brother, and I suppose he kept \$100 for himself.

Q. Did you see him give the \$100 to his brother?

A. Yes sir.

Q. Where was it given; near Wolf's store?

A. Yes sir; right—no; it was given right before we got into the car; the Westchester Avenue car, for me to go home.

Q. When was your next transaction with Harry Wolf or Joe Gluck with regard to bonds?

A. I didn't have any other transaction.

Q. You never handled any other securities?

A. No sir.

Q. Did you ever have any further talk with Harry Wolf about securities?

A. Yes sir; in reference to what business Mr. Gluck had with him. That is, he came up and told me about it, see?

Q. Who is "he"?

A. Joe Gluck. He came up and told me——

Q. (Interrupting.) Where was that?

A. That was up in a pool room.

Q. What pool room?

A. 174th Street & Southern Boulevard.

Q. Can you fix the time with relation to the 300 dollar item?

A. About a week or two after, I guess.

730 Q. Please state to the Court, Mr. Bunora, what you said to Wolf and what he said to you?

A. Well, I will tell you: First, Joe Gluck came up there to me and he said "Listen, Rudie" he said, "I did some more business with Wolf." He says "I gave him a lot of bonds, about \$20,000 worth, and I didn't get a nickel for them." He said "You know Wolf better than I do. Come down there, and maybe you can get some money out of him, being you know him before me." I said "Gee; I don't want to get mixed up in this thing, Joe; but I will go down with you anyway." I said "Maybe I can help you out. I don't want nothing." Because a week after I had that business with Wolf, Joe told me the bond was stolen; so I got leery of them; I didn't want to have nothing to do with it.

Q. You were perfectly innocent when you handled the bond originally?

A. Yes sir. And I went down with Joe that night—that was in the night time. We went down and met Harry Wolf, and we met this Fitz Roy. Joe Gluck was present at the time—four of us in fact were there. And I said to Harry: "Harry, why don't you come across to Joe? He tells me he gave you a lot of stuff, and you didn't give him a nickel for it." So he said to me, "Rudie, this stuff was given to somebody else, and the fellow got a drop on it," or something to that effect. I think he said he could not get the bonds through; or he didn't get nothing himself. And I said "That is a lot of crap." I said "I don't believe that; you can't put that over on me"—I am telling you the exact words I used; don't mind my slang, gentlemen. So I told him, I said, "I don't believe you." He said "Well, it is true, nevertheless." I said "Well, you can't put that into me." I said "You are no sap, to let them get out 740 of your hands like that. You must have got some dough for it." He said "No, I didn't get no dough for it." I said "Listen, Harry: why don't you come over, and play on the level, see, and try to get the dough for Joe?" I was saying that I was his partner in that deal; I thought maybe that would help.

Q. But as a matter of fact you were not?

A. I was not, no; I just said that so maybe it would influence Mr. Wolf to give some dough to Joe Gluck. But it didn't do any good, see; he would not give it up. And I don't know what Joe did after that.

Q. Is that the only time you ever spoke to Wolf?

A. Yes sir.

Q. You only spoke to him twice?

A. That is, in reference to any of these bonds or anything like

- Q. Well, did you ever talk to him again about any securities?
A. No sir; never.
Q. Did you ever have any securities dealings with him at all?
A. No sir. In fact, he was leery about taking that first bond.
Q. But he took it?
A. Yes sir. I say he was leery about it at first.
Q. Then he took \$20,000 worth more?
A. That I didn't know about. That I don't know anything about.
The only thing I know about that is this conversation which I told you about.
Q. Did Harry Wolf admit that he had received the \$20,000 more? A. Well, when a man says that he gave them to somebody else and he didn't get no money for them, naturally that is telling you himself that he must have had the bonds. He did not exactly admit it to me; but I could see for myself—anybody with common sense, from his explaining that he didn't get any money
741 for the bonds, could see that he must have had the bonds himself.
J. Did he tell you who he gave them to?
A. No sir, he did not.
Q. Did he say he had given them to any broker?
A. No sir.
Q. Or to any member of his family?
A. No sir; he never mentioned any names to me at all.
Q. Did you ever go about with Harry Wolf anywhere?
A. No sir.
Q. Did you ever associate with him?
A. No sir, I never associated with him.
Q. You never associated with him?
A. No sir.
Q. Did you ever go about much with Fitzmaurice, or Fitz Roy?
A. I didn't go about with him at all. I just used to meet him downtown; that is all.
Q. Did the three of you ever go out together, Fitz Roy, Wolf and you?
A. No sir.
Q. Did you ever go together anywhere?
A. No sir.
Q. Never had a meal together, the three of you?
A. Oh, well, let me see. I think we ate once, I believe.
Q. Where was that?
A. Up on Longwood Avenue.
Q. Where; what restaurant?
A. In a bakery there; the Southern—Boulevard Lunch.
Q. What street is that?
A. That is right on the corner of Longwood Avenue & Westchester; right where the junction is there. Prospect Avenue, Westchester & Longwood.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner

742 RUDOLPH BUNORA recalled.

Examined by Mr. Myers:

Q. Did any such conversation as that ever take place, Bunora?

A. Yes; that is how I was introduced to him. I wanted to——

Q. (Interrupting.) You both agree on that as the first time of meeting; is that right?

A. Yes sir; that is right; I was introduced to Harry. I wanted to lay a bet on a horse that a friend of mine got a tip on, see? And I put \$2 on him.

Q. Wolf says that was in August of last year. Can you fix the time?

A. No; I don't think it was that late.

Q. It was earlier than that?

A. Yes sir.

Q. But you both agree as to the circumstances surrounding the meeting?

A. Yes sir.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

743 RUDOLPH BUNORA recalled.

Examined by Mr. Myers:

Q. Did you hear that testimony, Mr. Bunora?

A. That was the first time, Mr. Myers.

Q. Well, state it fully now.

A. He gave me the bond back; he said he didn't want to have anything to do with it; he didn't think he could do anything with it. So I called him up again and asked him could he do anything on it. He said "Come down with the bond." And I went down with the bond. That is the time I was telling you about. He said "I think I can get rid of it."

Q. Then you agree with Mr. Wolf on this proposition: That you were introduced to him by Fitz Roy?

A. Fitz is how I knew him. The first time I knew his name is today.

Q. And the conversation in the beginning had relation to placing a bet on a horse?

A. Yes sir.

Q. Then the same day you asked him to dispose of this Missouri Pacific bond?

A. Yes; I think it was the same day.

Q. And you gave him the bond?

A. I have him the bond.

Q. And he gave it back to you?

A. Yes sir.

Q. In that respect you agree with him?

A. Yes sir.

Q. So later on what happened?

A. I called him up again.

Q. The same day you gave it to him, or when?

A. No; I think it was the following day, or a couple of days after; I am not sure.

Q. You called him on the telephone?

A. Yes sir; at his store—at his father's store rather. I told him, I said "Do you think you can do anything with it, Harry?"

744 He said "Well, come down." He said "I think I can get it through." So I brought it down, and he took it from me and told me to come back in a day or so.

745 Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

RUDOLPH BUNORA recalled.

Examined by Mr. Myers:

Q. Do you know where Fitz Roy is now?

A. No sir, I do not.

Q. Do you know where he lives?

A. No sir.

Q. Did you ever know where he lived?

A. No sir. I only knew him as an acquaintance downtown. I never went into the fellow's home living. I never even asked him where he lived, or anything like that. It was just like an acquaintance. He used to come around to hear me sing; that is how I got into it with him.

Q. Well, how did it happen that he was along that evening when you spoke to Wolf about the securities?

A. I don't know; he may have had an appointment with
746 Wolf; he might have been with Wolf at the time.

Q. Did he come in with Wolf?

A. It was on the street that we met. He was with Wolf at the time.

Q. Who were you with, Gluck?

A. Yes; I came down on the Subway with Gluck.

Q. Did you meet Gluck?

A. No.

Q. You had an appointment with Gluck?

A. No; I didn't have no appointment with him at all. He took me right out of the pool room where I was shooting billiards.

Q. Who did?

A. Joe Gluck took me right out of the place; after I finished my game he said "Come on down with me to Harry Wolf." So I went right down with him, without any appointment at all; just on the spur of the moment.

Q. This conversation took place on the street?

A. Yes sir.

Q. Near Wolf's store?

A. Around the corner, on Longwood Avenue.

Q. Did you ever ask Wolf to whom he gave those securities?

A. No; I never asked him. But I asked him why didn't he come across with the money.

Q. Well, do you know to whom he gave the securities?

A. No, sir, I did not.

747 Q. Have you any information at all on the subject?

A. The only thing I can remember was this here Fitz, he said something about two fellows having them.

Q. Who said that?

A. This Fitz. I didn't know their names at the time. He just mentioned the fellows; but I found out later who those two fellows were. One was named—one fellow they call Buck.

Q. Who?

A. Buck.

Q. Buck Connell?

A. I think it was Buck Connell, yes sir.

Q. And who was the other?

A. And McCollough. I think they were the two; I am not sure about that. But they were the names that were mentioned by Fitz.

Q. At this meeting of the four of you?

A. Yes sir.

Q. Now state that a little more fully please?

A. Fitz mentioned that he thought Buck and this McCollough were doing him out of money.

Q. Go right ahead.

A. That is all there was to it.

Q. What did Harry Wolf say?

A. He didn't say nothing.

Q. Did he hear it?

A. Yes sir, he heard it.

Q. Was that within his hearing?

A. Yes sir.

Q. What did he say?

A. The four of us were right together; it could not be out of his hearing.

748 Q. Well, Harry Wolf did not deny it, did he?

A. Not that I know of; not that I remember.

Q. Well then, didn't you ask Harry Wolf again, "What about it?"

A. Yes; I asked him. I said "What about the dough?" Because I was not sure about McCollough or this Buck Connell getting the bonds, see? So I didn't want to ask him about seeing Buck Connell or McCollough; because I wasn't sure about it. I said "How about the money?"

Q. But your best information and belief is that Buck Connell and McCollough got those securities from Harry Wolf, to dispose of them?

A. I don't know whether they got them from Harry Wolf or not; I could not say they got them from Harry Wolf.

Q. Well, are they the same securities that Harry Wolf got?

A. Yes sir; they are the same securities.

Q. How do you know that?

A. Well, because naturally, Fitz was talking about that.

Q. Are they the same securities that you were talking to Harry Wolf about?

A. As far as I can see, yes.

Q. Well now, did you ever talk to McCollough about those securities?

A. No sir; I never met him.

749 Q. Or Buck Connell?

A. No sir.

Q. Did you ever go back again and talk to Harry Wolf about it?

A. No sir, not that I remember.

Q. Have you seen Harry Wolf since you have been arrested?

A. No sir.

Q. Have you heard from him?

A. No sir—oh, I saw him once when he was in the jail?

Q. Did you talk about it then?

A. No sir; I didn't talk about nothing. I was trying to borrow some money from him; that is all. I didn't have nothing to say to nobody.

Q. Well, have you any other information as to what became of those \$20,000 of securities?

A. No sir, I could not tell you nothing about them.

Q. You would not know where to find them?

A. No sir. The only thing I can tell you is what I heard from that Fitz; that is all the information I had. That left an impression on my mind that this McCollough and Buck Connell were the two fellows that must have had something to do with it; because Fitz mentioned them. He said "Them guys are doing me out of the dough."

Q. How did you connect that up with Harry Wolf?

A. Well, Harry was there; I don't know how Fitz spoke
750 about it.

Q. What is the connection between Harry Wolf and Alfred Fitz Roy?

A. That I could not say.

Q. What do you know on that subject?

A. What; about Harry and Fitz being together? I don't know nothing about that.

Q. Are they partners?

A. That I could not say; because I would not want to condemn a man on anything I don't know about.

Q. What is your information on the subject?

A. Well, they were together; that is all I know.

Q. Well, were they always together?

A. Not that I know of.

Q. Were they generally together?

A. Well, I guess they were—maybe he could tell you about that.

Q. Well, did Harry Wolf ever tell you that Fitz was his partner?

A. No sir, he never did.

Q. Did Fitz ever tell you that Harry Wolf was his partner?

A. No sir.

Q. How do you know they were partners?

A. I didn't say they were partners.

Q. Well, what information have you as to whether they are or not, or were?

751 A. I don't know whether they were partners or not. The only time I saw them together was when they were in that crowd there, the four of us. The four of us were together. Whether they were together before, or whether they were together all the time, I could not say; because I never met them.

Q. Well, do you know, or have you learned whether Harry Wolf and Fitz handled those securities together with Buck Connell and McCollough?

A. No sir, I never did.

Q. You never learned anything about that?

A. I didn't bother about them any more after that night. I didn't want to have nothing to do with it, see? I went down and spoke for Joe; that is all that I did. When I saw I could not get nothing out of him, I naturally dropped everything; I didn't have nothing to do with it.

Q. Then your entire connection with all of these matters was that you received \$300?

A. That is all.

Q. And you turned the whole \$300 over to Joe Gluck?

A. Yes sir.

Q. And you got back \$100?

A. Yes; Joe gave me \$100 for myself.

Q. That is all you ever got out of the whole transaction?

A. Yes sir.

752 Q. Do you know how much Harry Wolf got?

A. That I could not say—in bonds?

Q. Yes.

A. Well, as far as I know, was Joe told me something around \$20,000 worth.

Q. And then you told that to Harry Wolf?

A. Yes sir.

Q. And he did not deny receiving them?

A. No sir, he did not deny receiving them; he just said that he did not get no money for them.

Q. Now, have you any bank account?

A. No sir.

Q. Any safe deposit box?

A. No sir.

Q. Or any place where you put securities?

A. No sir.

Q. How did Harry Wolf address Fitz, do you recall?

A. He just used to call him Fitz; that is all.

Q. Fritz or Fitz?

A. Fitz; F-i-t-z.

Q. That is the only name you knew him by?

A. Yes sir; until just a little while ago when you mentioned Fred Fitz Roy.

Q. Did that Fitz live up in the Bronx?

A. Not that I know of. I don't know where he lives.

Q. Well, where did he live?

A. I don't know where he lived.

Q. And you never did know?

753 A. No sir; I never went into the fellow's home living at all.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

RUDOLPH BUNORA recalled.

Examined By Mr. Myers:

Q. Now Mr. Bunora, have you heard the testimony of Harry Wolf?

A. Yes sir.

Q. Do you say that is true or not?

A. Parts of it are not true.

Q. What parts are not true?

A. Well, if you go over it again, I can tell you; I had my mind off it.

Q. Well, he says that he never had any conversation where the four of you were together; you and Fitz and Gluck and he.

A. That is an untruth.

755 Q. What other evidence have you of that meeting?

A. Why, Mr. Gluck was there; Fitz was there; he was there; and I was there; the four of us were there; no getting away from it. I would not come up here and tell you one thing from another.

Q. You did not profit out of this transaction at all?

A. No sir, I did not. I was doing it just merely as a favor to Joe; because I had done one thing, and that is how I got into it; I thought maybe if I went down with Joe Gluck——

Q. (Interrupting.) Do you know anyone who was present at this conversation besides the four of you?

A. No sir.

Q. Do you know anyone who saw you meeting together?

A. No sir, not that I can remember.

Q. Was it where anyone could see you?

A. Oh, we were on the street; I don't know whether anyone saw us.

Q. Was it in the evening?

A. Yes, it was in the evening; it was dark.

Q. And you never discussed it with Wolf after that?

A. No sir.

Q. Did you discuss it with Gluck after that?

A. No sir, I did not. I didn't have anything to do with none of them.

756 Q. Or with Fitz?

A. No sir; none of them. I kept far from them when I found

out what they were doing; because I had a family and I didn't want to get mixed up in any of that kind of junk.

Q. Do you know who McCullough is?

A. No. I don't know either of those fellows.

Q. Or Buck Connell?

A. No sir.

Q. You never met them?

A. No sir.

Q. You don't know whether Fitz has a criminal record or not?

A. No sir; I don't know. I don't think he is that kind of a

fellow, to tell you the truth; he is a clean cut fellow. As far as

I know him, I don't think he ever did have a criminal record. That

is, as far as I know; he may have, and he may not. I am just tell-

ing you, as far as I know, I don't think he is that kind of a fellow.

Q. Do you know where Buck Connell lives?

Q. No sir, I don't know.

Q. Do you know where McCollough lives?

A. No sir.

Q. Do you know where they work?

A. No sir.

Q. Do you know where they did work?

A. No sir.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

757 RUDOLPH BUNORA recalled.

Examined by Mr. Myers:

Q. Have you had any conversation with Furey in the Tombs or in Court or anywhere, since you have been arrested?

A. Why yes; a little verbal conversation.

Q. Tell us all about it.

A. There was just—he was telling me about different things he was going to do when he came up for trial, he was telling me.

Q. When was this, the first time?

A. I guess about the first or second or third week I was in the place.

Q. What took place; what was said?

A. Well, he didn't say much about the case at first; but after a while he was telling me how he was going to make a great speech; going to be like an orator at the trial.

By Mr. Dooling:

Q. He was going to make a great oration in Court, did he say?

A. Yes sir.

Mr. Furey: You are a liar.

Mr. R. Bunora: Don't try to bully me, because I am going to tell you the truth.

Mr. Furey: Go ahead, you liar. Tell them anything you want.

Mr. R. Bunora: Don't call me a liar, because you know this is right.

758 Mr. Furey: Go on, you dirty rat.

Q. Don't be afraid of him; go ahead.

A. I am not afraid of him. Just listen to what I am going to tell.

Q. Go right ahead.

A. He said he was going to be an orator at his trial.

By Mr. Dooling:

Q. Just like he is acting now?

A. Exactly, Mr. Dooling. He told me about a great spiel that he was going to put up. He tried to get me to tell him how the Street was worked; how the inside of the office was worked, so that he could have an idea of what he could say, not implicating me; just so that he could make his story stronger. He wanted me to tell him the names of some brokers whom I had an idea were crooked, you understand and he wanted me to tell him just how they did crooked business; which I did not know.

Q. Bucket shops and the like?

A. Exactly. Now, you know as well as I do that a clerk is never noticing those things. He tried to get me to tell him them things so that he could turn around and tell you people over here that he knew brokers downtown that were——

Q. (Interrupting.) Some that were good, and some not good, and some crooked?

A. I will tell you the exact words he used——

759 By Mr. Myers:

Q. Three classes? Did he tell you about the three classes?

A. Just a minute, Mr. Myers——

Q. (Interrupting.) Legitimate, those that were not legitimate, and bogus; is that right?

A. Yes. He was going to come over here and say there are certain offices—that is what he was going to say in Court—and those are no lies what I am telling you. He said that he was going to come over here and tell the District Attorney, and everybody over here, that he knew of certain brokers, the names of which were to be supplied by me, that they were crooked; that they had stocks stolen by their own runners, collecting losses from the surety people, and then re-selling the stocks again. So that they could get double value on the stock. That is just what he tried to have me do over there. Now you know as well as I do that that can't be done.

By Mr. Dooling:

Q. Because the members and other things are pretty effective checks?

A. Exactly. Everybody knows that when a certificate is put on the Street the first time it shows up, it is always easily traced,

By Mr. Myers:

Q. Go ahead; that is one occasion. Tell us some other occasions that Mr. Furey told these things.

760 A. He just used to tell me about what sentence I was going to get.

Q. How much was he going to give you?

A. I was going to get five to ten.

By Mr. Dooling:

Q. What was he going to get?

A. He expected to beat his rap; to beat his charge.

Q. How about the note?

A. Oh yes. Joe sent a note—at least, Joe's mother sent a note up to Joe——

Q. (Interrupting.) That is to Joe Gluck?

A. To Joseph Gluck.

Q. What happened to the note before it got to Joe?

A. Before the note reached its destination, Mr. Furey intercepted it.

Q. Intercepted it you mean?

A. Intercepted, rather. He had somebody in the Tombs——

Q. Some trusty?

A. Yes sir; in the Tombs—I don't know how he done it, but he must have——

Q. (Interrupting.) He did it?

A. He must have had somebody under his influence; or he had—it was delivered to Furey, brought in to Ed. Furey, before it went to Joe Gluck.

Q. How did you hear this?

A. How did I hear?

Q. How do you know about the note? Did Furey tell you?

761 A. Mr. Furey told me himself.

Q. What did he say?

A. He said "Listen, kid", he said "A note came up here from Joe's mother; it was going to Joe, but I got it fixed with Jimmy so that I am getting them first, to see what she writes in to Joe, before he gets it."

Q. And did he tell you he opened it?

A. Yes sir; them are the exact words that Mr. Furey told me over in the Tombs.

Q. Did he say anything about what you should say to Gluck about it?

A. Yes sir; he told me things, and I used to go to Joseph Gluck afterwards—every time I spoke to him he always tried to get me to make Joe think that Ed. Furey did not have any hard feelings towards him. Ed. Furey thought that I was going to carry tales from Joseph Gluck down to him, about what Joe was saying, you know, and all about what was going on over in the District Attorney's office.

Q. Did he seem anxious to know that?

A. He seemed very anxious to know that.

Mr. Furey: Why shouldn't he?

Mr. R. Bunora: Exactly.

Mr. Furey: I was interested in the case.

762 Mr. Dooling: I didn't know whether you were or not. Are you interested?

Mr. Furey: I am, for myself.

Mr. R. Bunora: He is getting interested now.

By Mr. Myers:

Q. Go right ahead. What happened after that?

A. He used to tell me the same thing over and over again, to try to get me to carry tales back from Joe Gluck. And I told Joe, if he didn't trust me, to be on the safe side and not to tell me anything. Because I didn't want to carry any tales back to Ed. Furey. If he wanted to find out, let him go over to the District Attorney's office himself; which he declined many a time; he refused the offers many times to come over here.

By Mr. Dooling:

Q. Well, did he tell you that he did come over here one night?

A. Yes sir, he told me; but he did not tell me what he said.

Q. He said he was here for a little time though, didn't he?

A. I heard it throughout the building that he was here from 4 o'clock in the afternoon——

Mr. I. Gluck (interrupting): I heard he was from 4 o'clock in the afternoon until 2 o'clock in the morning.

Mr. Furey: Naturally, they would all know when I
763 came in.

By Mr. Myers:

Q. Did he say that he had lied in his testimony?

By Mr. Dooling:

Q. Or did he say that he convinced us of his innocence?

By Mr. Myers:

Q. Did he say he had put it over on us?

A. I don't think so. I don't remember what he said.

By Mr. Dooling:

Q. Well, that is all right; if you don't remember, pass on.

A. I don't remember.

By Mr. Myers:

Q. Is there anything else that you can tell us? Did he threaten you at any time?

A. No, he did not threaten me at all.

Q. What did he say, if anything, to you about The Count, or about any shake downs?

A. One day I was talking to Furey on the steps of the Tombs.

Q. You mean across the street?

A. Yes; on the steps over in the Tombs. Furey told me that The Count had some stocks that belonged to Joe.

Q. Did he say how much they were?

A. About \$85,000 worth I think he mentioned.

Q. Did he say how he got them?

A. No sir.

Q. Did he say whether The Count double crossed him in some way?

A. Yes.

764 Q. What did he say?

A. He said that The Count was double crossing him.

Q. That he held out on him, Furey?

A. Exactly; he held out on Mr. Furey; and when he gets out he is going to square up with The Count.

Q. Did he say how he was going to square it up? Whether he was going to give him dinner, or take him to the theatre, or anything?

A. I don't remember what he said. I remember he said he was going to get even with him. I don't remember how he said it.

Q. Did he say anything about any other hold ups?

A. Not that I know of.

Q. Did he say anything about Cleveland?

A. Oh yes. It was known throughout the place that he was supposed to be a wild man; some kind of a great fellow; a great gunman. He was supposed to have taken somebody—sprung somebody out of a Cleveland jail, so I heard.

Mr. Furey: Did you read that in the paper?

Mr. R. Bunora: No; you told me yourself.

Mr. Furey: You are a liar.

Mr. Bunora: You told me the first day, up in the Magistrate's Court. He will recollect it.

Q. What did he say in the Magistrate's Court?

765 A. That is just what he told me.

Mr. Furey: You confessed, didn't you, in this Court—

Mr. R. Bunora (interrupting): Just a minute; don't ask me no questions. Mr. Brown and Mr. Mayer came in there, and Mr. Murphy. They called him one arm Furey. He told me about him springing somebody in Cleveland out of jail; or something to that effect. Furey said "They will never get that on me." But he admitted that he did it.

By Mr. Dooling:

Q. Well, did he tell you of any other heroic acts of his?

A. No sir, not that I know of.

Q. What did he say, if anything, about the charge of extortion against him, and the charge of carrying a gun?

A. He said the only charge they were holding him on now was the charge of extortion. He said the main charge he was going to beat.

Q. Did he say how?

A. No sir; he didn't tell me.

By Mr. Myers:

Q. What did he tell you about the extortion charge?

A. He just said he was going to beat it.

Q. Didn't he tell you the facts surrounding it?

766 A. No sir.

Q. Did he tell you anything about Binghamton?

A. No sir.

Q. Did he tell you about any stick up jobs of his?

A. No sir, he never did.

Q. Where he held up people?

A. No sir.

Q. And robbed them?

A. No sir.

By Mr. Dooling:

Q. Did he say whether Adler was in with him on the extortion charge, or The Count?

A. Yes sir.

Q. What did he say about The Count?

A. He didn't tell me much about Adler.

Q. He did not?

A. No sir. The only thing I knew was that Adler was with him at the time; and Adler was supposed to be a friend of Joe's; he was the one that arranged this extortion.

By Mr. Myers:

Q. How do you explain the connection between Adler and Furey? How did they get together?

A. That I could not say.

Q. Well, did you ever discuss that with Furey?

A. No sir, I did not.

Mr. Dooling: Did you ever discuss that with Furey, Irving Gluck?

767 Mr. I. Gluck: No sir.

Mr. Dooling: Did you, Joe Gluck?

Mr. J. Gluck: No sir. He never told me how he met him. He told me one day he met Adler in front of the Argonne, and Adler

explained to him about a fellow up there stealing bonds, and thinks he can shake him down for all he has got; easy mark.

Mr. Myers: What I am trying to find out is whether Adler went up, and got acquainted with Furey after he first became a friend of yours; or whether Adler knew Furey before he knew you.

Mr. J. Gluck: Not that I know of. The way I understand, Furey told me he was introduced by somebody to Adler. A fellow that Adler knew introduced Adler to Furey.

Mr. Myers: Before Adler knew you?

Mr. J. Gluck: That is what I have heard; that is all. I don't know anything about that.

Mr. Myers: So that when Adler came and slept at your home, he was then already a friend of Furey's?

Mr. J. Gluck: Oh yes sir. He framed that up while he was sleeping at my house; sure. He asked me for \$30 one day. I had

768 given him \$100; his wife wanted to go away, and wanted \$30. And I refused it; because I found out what kind of a fellow he was; he was trying to get me to spend a whole lot of money on Lou Dorfman.

Mr. Myers: Where did Furey get the information that you had securities? Why did he plant Adler up in your home?

Mr. J. Gluck: I don't know if he planted Adler up in my home.

Mr. Myers: That is what I am asking you.

Mr. J. Gluck: I never knew that Adler knew Furey. At that time I didn't know Furey—I don't know anything about that. I am just telling you about how I got in contact with Adler.

Mr. Myers: Did Furey tell you he had planted Adler in your home?

Mr. J. Gluck: Oh no; he never said that.

By Mr. Dooling, addressing Mr. R. Bunora:

Q. Did Furey say anything to you about Haines or Kean?

A. No sir, he did not.

Q. That they were working in concert; or that Kean had received a letter written by Furey?

A. No sir, he did not.

Q. He never told you?

A. No sir.

769 By Mr. Myers:

Q. Did you ever meet Kean?

A. No sir, I did not. I didn't know who he is, until I saw him identified. That is the first time I ever saw the gentleman.

Q. Did you ever meet John J. Morey?

A. No sir.

Q. Were you ever at the Hotel Claridge?

A. No sir.

Mr. Furey: Can I ask him some questions?

Mr. Dooling: Certainly.

Mr. Furey: When I asked you with regards to those men, or bonds, so-called bogus bond houses downtown, I asked you the names of some of them, did I not?

Mr. R. Bunora: Yes, you did.

Mr. Furey: I never stated to you what I wanted to know that for, did I?

Mr. R. Bunora: Yes, you did.

Mr. Furey: You confessed, didn't you, when you were taken up to—when you were caught and taken up there; didn't you confess?

Mr. R. Bunora: I told them what I knew, yes.

Mr. Furey: You were beat up, weren't you?

Mr. R. Bunora: No.

Mr. Furey: Didn't you tell me you were beat up?

Mr. Bonora: It don't make no difference what I told you.

770 Mr. Furey: I am asking you the question: Did you or did you not?

Mr. Bunora: No, I was not beat up.

Mr. Furey: Well, didn't you tell me that?

Mr. R. Bunora: If I did, I did it just to be rough.

Mr. Furey: Now, did you tell me that; yes or no?

Mr. R. Bunora: Yes, I told you that.

Mr. Furey: I knew you confessed, didn't I? You told me that you confessed, didn't you? You pleaded guilty to it up there?

Mr. R. Bunora: No, I did not say that I pleaded guilty. I said I pleaded not guilty.

Mr. Furey: Did you ever see me in your life, before you were arrested?

Mr. R. Bunora: No, I did not.

Mr. Furey: You not knowing me, did you, before that.

Mr. R. Bunora: No sir, I did not.

Mr. Furey: Now knowing that you confessed, you state that I used to go up and tell you all these things, after I understood you were confessed, you were a witness against me—

771 Mr. R. Bunora (interrupting): Now wait a minute—

Mr. Furey (interrupting): I haven't asked you the question yet. You say I done that—

Mr. R. Bunora (interrupting): Wait a minute; now I will answer you, and I will answer you in a way that you understand me—

Mr. Furey (interrupting): I can understand you if you speak good plain English.

Mr. R. Bunora: I don't think you can; but just get this: When I told you about me, I told you I did not confess. I told you I was standing pat—

Mr. Furey: All right. Didn't you state—

Mr. Dooling (interrupting): Let him finish.

Mr. R. Bunora: Wait a minute—and then you confided in me.

Mr. Furey: All right. You was up at the line-up, up on top there, when we all were lined up, weren't you?

Mr. R. Bunora: Yes, I was.

Mr. Furey: And the Inspectors asked you questions at that time, didn't they?

Mr. R. Bunora: Yes sir.

772 Mr. Furey: Didn't they ask you, and Joseph Gluck, as him
and you were standing—now I am asking you if you con-
fessed the bond thefts, and you said yes.

Mr. R. Bunora: No, I did not say yes.

Mr. Furey: Get that record. Now after that do you think that I
would trust you in any conversation, unless I was trying to get in-
formation out of you?

Mr. R. Bunora: You had as much faith in me as you had in your
own son; you know it.

Mr. Furey: You are a liar.

Mr. Bunora: And you are another.

Mr. Furey: That is all.

Mr. R. Bunora: Don't think you can bull me.

Mr. Furey: You and Joe Gluck cell together, don't you, in the
same cell?

Mr. R. Bunora: No.

Mr. Furey: You did, didn't you?

Mr. R. Bunora: Yes, we did.

Mr. Furey: How long did you cell together?

Mr. R. Bunora: For about a month and a half.

Mr. Furey: You have talked this matter over between you when
you celled together, didn't you?

Mr. R. Bunora: Not about you.

773 Mr. Furey: You talked this matter over?

Mr. R. Bunora: Certainly we have.

Mr. Furey: That is enough.

Mr. R. Bunora: We went over there to help the District Attorney's
Office to make out a list for these people over here. Joe had to re-
fresh his memory. You know your questions don't do no good.

Mr. Furey: You rehearsed, or talked over the case against me,
didn't you? And Joseph Gluck told you a whole lot of things to
say?

Mr. R. Bunora: No; we did not rehearse anything.

By Mr. Dooling:

Q. You have no hard feelings against him, have you?

A. Why should I? What did he do to me? I didn't know the
man until the day I met him in the Second Deputy's office.

Mr. Furey: You don't know anything about me, do you?

Mr. R. Bunora: Only what you said.

Mr. Furey: Do you think I would tell you anything afterwards?

Mr. R. Bunora: Listen: You don't have to tell me anything after
this.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

774 United States District Court, Southern District of New York
Before Alexander Gilchrist, Jr., Esq., Special Commissioner.

In the Matter of DAVID W. SULLIVAN and NORMAN S. BOWLS, Individually and as Copartners, Trading as Sullivan & Co., Bankrupts.

New York, March 12th, 1920.

DAVID W. SULLIVAN, being first duly sworn by Commissioner Gilchrist, testified as follows:

Examined by Mr. Myers:

Q. What is your full name?

A. David W. Sullivan.

Q. Where do you live in New York?

A. Pennsylvania Hotel.

Q. And you have been living there for the past six months?

A. While in the City, yes.

Q. You are a member of the firm of Sullivan & Co., the bankrupts in this proceeding?

A. Yes, sir.

Q. Your partner is Norman S. Bowls?

A. He is.

Q. And he is here in Court today?

A. Yes sir.

Q. As I understand it, the firm of Sullivan & Co. was engaged in the brokerage business?

A. That is right.

Q. And its principal place of business, while it was in business, was in the City of New York at No. 10 Wall Street?

A. That is correct.

Q. Please tell us the history of Sullivan & Co. from the very beginning; how it started, and under what circumstances, and everything about it, in your own way.

A. It started in March 1919. I formed a partnership
775 with Mr. J. T. Longley and opened an office at 1421 G street, N. W., Washington, D. C. and arranged for a wire to the office of Herbert T. Greenwood, at that time it was 50 Broad Street, who was a member of the Consolidated Stock Exchange.

Q. Please state right there, before we go further, just what you mean by arranging for a wire?

A. Mr. Greenwood executed all orders, that we telegraphed to him from Washington, on the Floor of the Consolidated Exchange.

Q. Did the firm start with any money?

A. Yes; a couple to \$3,000 possibly.

Q. That was your own money?

A. Yes sir.

Q. Longley did not put in any money?

- A. It was not necessary.
- Q. Longley was simply a figurehead, wasn't he?
- A. Yes sir.
- Q. Was Mr. Easterday with you in the beginning?
- A. I employed Mr. Easterday as manager.
- Q. That is Mr. W. W. Easterday?
- A. Yes sir.
- Q. He now lives in Washington?
- A. Yes sir.
- Q. Now Mr. Easterday had had considerable experience in this business?
- A. Yes.
- Q. And you had had none?
- A. That is true. We were not very successful, and it was necessary for us to borrow some money from Mr. Bowls from time to time.
- Q. When did you first start to borrow money from Bowls after you started this business?
- A. Probably a month.
- Q. You had known Mr. Bowls for a good many years?
- A. Yes, I have.
- Q. Mr. Bowls is a member of the Bar of Washington, D. C., is he not?
- A. Yes sir.
- Q. And you at one time studied law yourself?
- 776 A. For two years.
- Q. Mr. Easterday is a man who really has a bad record, has he not?
- A. He has had some trouble.
- Q. I mean, he had been convicted of crime?
- A. No; never had been convicted.
- Q. Never had been convicted?
- A. No.
- Q. But he has been in——
- A. (Interrupting.) In various difficulties.
- Q. He had been in bankruptcy, had he not?
- A. Yes.
- Q. And he had formerly been in the brokerage business in New York City on an extensive scale?
- A. He had been, yes.
- Q. For himself?
- A. Yes.
- Q. And with other concerns?
- A. I think he had been employed by other concerns.
- Q. Can you mention some of them?
- A. He was employed by Shearson, Hammill & Co.
- Q. And where else?
- A. He worked on the Curb for Shearson, Hammill & Co.; and later on he started the firm of W. W. Easterday & Co., which afterwards failed.

Q. Now you knew when you employed him that he had been very wild and reckless?

A. Yes sir.

Q. In his business matters and in his private life?

A. Yes.

Q. But you supposed that on account of his experience he would be a valuable man for you?

A. I intended to use him for the good that I could get out of him.

Q. And he promised to be good, did he not?

A. Yes.

Q. And you thought he would be good?

A. I did.

Q. Now, you got down to the point where you started to borrow money from Mr. Bowls, the bankrupt.

A. And Mr. Bowls put up the money very willingly, and eventually he had run up to probably \$10,000, somewhere along
777 there, when I saw the necessity of having Bowls with me in order to try to recoup the losses we had already suffered; because I felt that his money should have the benefit of his attention; and not only that; I thought Bowls would make a broker.

Q. Notwithstanding that he was a lawyer?

A. Yes. It was necessary in short order to put up more money, which Mr. Bowls did, until he had eventually put up around \$40,000, possibly \$50,000. And it was through the bad management of Mr. Easterday that this was necessary.

Q. Now, when you started with Mr. Longley did you have a partnership agreement?

A. Not in writing.

Q. Did you have any with Mr. Bowls?

A. No.

Q. Nothing in writing?

A. Not a thing.

Q. Did you have any agreement in writing with Mr. Easterday?

A. No.

Q. Now, you got down to the point where you took Mr. Bowls in partnership; is that right?

A. Yes, that is right; some time in May or June 1919.

Q. And at that time you owed him approximately \$50,000?

A. Not at that time, no; he afterwards put in more.

Q. At that time approximately how much did you owe him?

A. \$10,000 perhaps.

Q. And you took him in partnership?

A. Yes.

Q. Fifty-fifty?

A. Yes.

Q. And was the firm name changed in any way?

A. No.

Q. It had been Sullivan & Co. from the beginning?

A. Yes. The printing done and everything, and to avoid expense, it was kept Sullivan & Co.

Q. This was all in Washington?

A. Yes sir.

Q. And then did you open a New York office?

778 A. Yes; but that was some time in September 1919.

Q. When did Mr. Bowls come in?

A. He came in in May 1919.

Q. What did you do in Washington between May and September 1919?

A. I really left the business in the hands of Mr. Easterday and Mr. Bowls.

Q. Why was that?

A. I had interests in Philadelphia that kept me away.

Q. And then you paid very little attention to the business from the time you went in, down to September?

A. Yes. As they needed me on two or three occasions, I went to Washington.

Q. Was not the New York office opened in August 1919 instead of September?

A. Possibly it was, yes. The office at 20 Broad Street was, yes.

Q. Where was Mr. Easterday in connection with this business, between the time you started and the time you opened the New York office?

A. In the Washington office.

Q. Running it?

A. Yes sir.

Q. He was manager?

A. Yes.

Q. He was the man who knew the business?

A. Yes.

Q. And you were relying upon him for the business end of it?

A. Absolutely.

Q. Then you opened the office in New York at 20 Broad Street?

A. Yes sir.

Q. In whose office?

A. Part of Randolph Newman's office.

Q. Randolph Newman is a lawyer?

A. Yes. Room 1516, 20 Broad Street.

Q. How did you come to Mr. Newman?

A. That was the only available space at that time.

Q. Well, did you know Mr. Newman before you went there?

779 A. Yes; I met Mr. Newman on one or two occasions.

Q. Through whom?

A. Through Easterday. He was representing Easterday on one or two of his troubles.

Q. We want to know what they were. What was Mr. Newman representing Mr. Easterday in?

A. In a proceeding in Washington, Mr. Newman came there representing two New Yorkers, to give bond, and he happened to meet Mr. Easterday on that occasion.

Q. Who were the two New Yorkers?

Sam Wheeler and Harrison Kinear. As I said, Mr. Newman

met Mr. Easterday in the Court House, and Mr. Easterday informed him that he was in some trouble in New York, and that he had no actual attorneys who were members of the New York Bar, and Mr. Newman undertook to interest himself as attorney for Easterday in the proceedings in New York. And from time to time, up to the time that Sullivan & Co. came to New York, he was in communication with Easterday at the office of Sullivan & Co., principally by phone.

Q. Then as I understand it, you met Mr. Newman through Mr. Easterday?

A. Yes.

Q. You met him in Washington through Mr. Easterday?

A. I first met him in New York through Easterday.

Q. Where?

A. 20 Broad Street.

Q. Before Sullivan & Co. opened its office in New York?

A. Yes.

Q. I want to know under what circumstances did you meet him first?

A. I went this day to Newman's office in order to—Easterday wanted to consult Newman in regard to that trouble.

Q. What trouble?

A. The trouble between Easterday and the Chatham & Phenix National Bank.

Q. Yes?

A. That is all I know about it.

780 Q. Well then, some time before Sullivan & Co. moved to New York, Easterday was involved in some trouble with the Chatham & Phenix National Bank?

A. Yes sir.

Q. Which did not involve Sullivan & Co. in any way?

A. Not at all.

Q. Is that right?

A. That was before Sullivan & Co. ever started, or ever thought of.

Q. And then Mr. Easterday wanted to consult counsel in New York, and he went to consult Mr. Newman?

A. Yes.

Q. And you went along simply as a friend; is that right?

A. That is correct.

Q. That was in the early part of 1919?

A. Probably.

Q. Then as I understand it, Mr. Easterday had been indicted in the early part of 1919 in the County of New York, in reference to some transaction with the Chatham & Phenix National Bank, and shortly thereafter Mr. Easterday went to consult Mr. Newman about the matter, and you went along?

A. That is right.

Q. Now that accounts for your becoming acquainted with Mr. Newman?

A. Yes sir.

Q. About how long after that meeting with Mr. Newman did Sullivan & Co. open its office with Mr. Newman?

A. Well, probably five months—four months. That was in February; that was the second month; and we opened the eighth month; that would be six months after.

Q. Will you please state a little more fully how you came to open an office with Mr. Newman?

A. At that time lower New York was very crowded, very busy, and I searched for four or five or six days for an office, and could not find a bit of space. And I casually dropped in to see Mr. Newman, and induced him to let me have a side room that he had.

781 Q. And you paid rent to Mr. Newman?

A. Yes sir.

Q. Now, have you told us everything that took place with reference to Sullivan & Co. before you came to New York, that you can think of?

A. That might have any bearing on this case.

Q. What bank account did you have in Washington before you opened your New York office?

A. District National Bank.

Q. Whom did you know there?

A. Mr. Offutt.

Q. Do you know his first name?

A. I do not. Mr. Bowls does.

Q. He was Mr. Bowls' friend?

A. Yes.

Q. What is the next bank?

A. National Metropolitan.

Q. Who did you know there?

A. Bowls opened the account.

Q. Any other?

A. That is all.

Q. Was the firm of Sullivan & Co. solvent after Mr. Bowls came into it?

A. Yes sir.

Q. Did he bring in some new capital?

A. He did.

Q. It was insolvent before that, was it?

A. At times.

Q. We have got down to the point where the firm of Sullivan & Co. opened an office in New York City, in the office or in an adjoining office to the Mr. Randolph Newman, lawyer, and that was in August 1919?

A. Yes sir.

Q. And then did Mr. Greenwood continue to execute your orders in New York?

A. Yes, sir, for a short time.

Q. And did you make application to be listed on the Consolidated Stock Exchange?

A. Yes sir; we had made application prior to that; just about time we came to New York we made application. We made ap-

plication to the Consolidated Stock Exchange on or about the 6th day of August 1919.

782 Q. And did you become members of the Consolidated Stock Exchange?

A. Mr. Bowls did.

Q. With whom was that matter taken up? Who handled that for you on the Consolidated Exchange?

A. Bowls.

Q. I mean who on the Consolidated Exchange handled it for you?

A. Mr. Bowls arranged it with Mr. Silkworth.

Q. Who is Mr. Silkworth?

A. President of the Consolidated Stock Exchange.

Q. How did Mr. Bowls get to Mr. Silkworth, do you know?

A. Mr. Bowls was introduced to Mr. Silkworth by Herbert T. Greenwood.

Q. How long did you stay at 20 Broad Street, approximately?

A. Probably not a month.

Q. Then you went to 10 Wall Street?

A. Yes sir.

Q. And all the time that the firm of Sullivan & Co. was in business, its principal place of business was in New York City?

A. From August 1919 on.

Q. From August on. And it stayed in business until about the middle of October 1919?

A. That is correct.

Q. When you had your office at 20 broad Street, and when you moved over to 10 Wall Street, Mr. Easterday was the manager?

A. Yes sir.

Q. And he ran the whole thing?

A. I imagine so.

Q. And you were away all of August 1919?

A. Yes sir.

Q. And some part of September, October and November, 1919?

A. Yes sir.

Q. You gave very little attention to the business?

A. Very little.

Q. Mr. Easterday really ran the whole business?

A. Yes sir.

Q. Mr. Bowls came there once in a while?

783 A. Mr. Bowls was there during the month of August 1919, and up to the latter part of September 1919.

Q. And Mr. Easterday had as his assistant a Mr. David F. Browder?

A. Yes sir.

Q. Who was the cashier?

A. Yes sir.

Q. Right there I will ask you whether these were the other employees: William Keenan?

A. I do not know him.

Q. You do not know him at all?

A. No.

Q. John L. Franklin?

A. I do not know him.

Q. Lawrence J. Leaman?

A. I do not know him. They may be boys, messengers.

Q. C. H. Brady?

A. Yes.

Q. You knew him?

A. I knew him.

Q. What was his occupation?

A. He was not actually employed; he was going to be employed to operate a new office that we were expecting to open in Wilmington, Delaware—yes, he was actually employed. He was employed to open the Wilmington office.

Q. Did he receive a salary??

A. Yes.

Q. Was A. F. MacIntosh employed there?

A. Yes sir.

Q. What were his duties?

A. Telegraph operator.

Q. And Dan Jacobs?

A. Yes sir.

Q. What were his duties?

A. He helped in the office; worked in the office.

Q. Philip Harris at \$80 a week?

A. Yes; he was a man that used to work for Secor, Weil.

Q. William Cohen, \$35?

A. He is assistant bookkeeper.

Q. Morris La Vigna?

A. I do not know him.

Q. Catherine L. Leonard?

A. Yes; she was a stenographer.

Q. Jane Draycott?

A. She was another stenographer.

Q. William Rosenschein?

A. I do not know him. He might have been a board boy or a messenger boy. Mr. Easterday employed all the help.

784 Q. Did you open a bank account when you came to New York?

A. Yes sir; the Empire Trust Co. at first.

Q. Who introduced you there?

A. Charles Minton.

Q. Who is he?

A. He is just a man Mr. Bowls knew in New York. He is connected with the Bankers & Brokers Investigating Bureau, and Mr. Bowls asked him for a bank connection, and he introduced him to the Empire Trust Co.

Q. Did he get any money for it?

A. Not a cent.

Q. Well, what did he get for it?

A. Nothing.

Q. Why did he do it?

A. Friendly act; he did not get a thing.

Q. How did Mr. Bowls come to know him?

A. Through Mr. Easterday. We had taken out a subscription to his reporting agency. He ran a reporting agency, and we took out a subscription.

Q. Under what name?

A. Sullivan & Co.

Q. No; the reporting agency?

A. Bankers & Brokers Investigating Bureau.

Q. Was that the only bank account you had in New York?

A. The only one at the time, until the Bankers' Trust Co. account was opened.

Q. When was that opened?

A. That was opened on the 14th day of October 1919.

Q. Now, did you have any New York customers?

A. A few.

Q. Legitimate customers?

A. Yes sir.

Q. There were only eight accounts in New York, were there not?

A. Yes sir.

Q. And they are as follows, are they not: (Reading from ledger) Sam Smerling; A. Smerling; Elmer E. Steele; Charles Enright; H. Stadler; Simon Slupsky; P. Stadler; and A. Weitsen; is that right?

A. That is right.

785 Q. Is this account of Sam Smerling a legitimate account?

A. Yes, as far as I know.

Q. Who is he, do you know?

A. No.

Q. Did you ever meet him?

A. Not to my knowledge.

Q. Do you know who brought that account in?

A. Dan Jacobs, to the best of my knowledge and belief.

Q. And did Dan Jacobs bring in the A. Smerling account?

A. I think so.

Q. And the H. Stadler account?

A. Probably.

Q. And Simon Slupsky?

A. I think so.

Q. And P. Stadler?

A. Probably.

Q. And A. Weitsen?

A. Yes, I think so.

Q. So that outside of the accounts that Dan Jacobs brought in, to which I have just referred the only New York accounts that you had were these two accounts of Elmer E. Steele marked New York account No. 6; is that right? (Indicating.)

A. Yes sir.

Q (Continuing.) And Charles Enright, marked New York account No. 7? (Indicating.)

A. Yes sir.

Q. And then you had another account known as the George Wall account; is that right?

A. Yes sir.

Q. That was opened in the Washington office, is that right?

A. Yes sir.

Q. And that is know here in your ledger as account No. 192, Washington, D. C.? (Indicating.)

A. Yes sir.

Q. And these three accounts: George Wall, Elmer E. Steele, and Charles Enright, were each one of them fictitious; is that right?

A. Yes sir.

Q. There is no question about that, is there?

A. No.

Q. And these three accounts to which I have just referred you were only opened after you became acquainted with Nick Arnstein and Nick Cohen; is that right?

786 A. Yes sir.

Q. Now, what matters did Randolph Newman handle for your firm after you moved your office to New York?

A. First he attempted to straighten out the Bishop matter.

Q. Now, tell us about that?

A. Well, he merely advised me to go to see Mr. Bishop.

Q. What was that all about?

A. As far as I can see, the idea that Bishop's report was not very good.

Q. What does that mean?

A. Unfavorable report.

Q. Who is Bishop?

A. He is one of the Wall Street investigators.

Q. What did he report?

A. I do not know, but I had reasons to believe that the reports were not favorable, because we were having trouble doing business at the banks.

Q. What banks?

A. Seaboard National. That is the one I have reference to now.

Q. And what else? The Bankers Trust Co.?

A. The Bankers Trust Co., called a loan too.

Q. Who else?

A. That is all.

Q. Then you only had three bank accounts in New York?

A. Yes sir.

Q. The Empire Trust Co., the Seaboard National and the Bankers Trust?

A. Yes sir.

Q. Now, tell us some more about the Bishop matter?

A. So I called on Mr. Bishop and had a talk with him, and he promised to change his report in some respects.

Q. Why did he promise to change his report?

A. Well, he said that he had heard Easterday was connected with the firm; he had that in his report. I assured him that Mr. Easterday was not in the firm, and he said he would take it out of the report.

Q. Did you pay him any money?

A. Not a penny.

787 Q. Did you subscribe to his paper?

A. Not a nickel.

Q. Or to his service?

A. No. He is a very fair man.

Q. When did you open the account with the Bankers Trust Co.?

A. October 14th 1919.

Q. Who opened that; you or Mr. Bowls?

A. Mr. Bowls.

Q. Do you know how that account came to be opened?

A. No, I do not.

Q. Well, what was the financial condition of your firm at that time?

A. I was not in the City at the time.

Q. Where were you?

A. October 14th was that? Probably I was in Washington at that time.

Q. Well, don't you know how that account came to be opened?

A. I know that Bowls opened it.

Q. Well, do you know what the occasion for opening that was? What Bowls had in mind?

A. Well, we were in bad shape at the Empire Trust Co.

Q. Tell me all about that; how were you in bad shape; what was it all about?

A. Easterday lost considerable money in the market, and in order to meet some payment or other, he started a kite going between the National Metropolitan Bank of Washington, D. C. and the Empire Trust Co.

Q. Just what were those transactions? Will you please explain that in a little more detail?

A. Well, he would deposit a check drawn on the Metropolitan Bank of Washington, in the Empire Trust Co., and the following day he would get another check cashed on the National Metropolitan Bank in Washington, and wire the money down to meet the first check.

Q. I do not understand that. Will you please explain it? We want to get it straight.

A. Well, that is straight; you could not have it any straighter than that.

788 Q. You mean there were two checks drawn on the National Metropolitan Bank for say \$1,000 each?

A. Yes sir.

Q. Drawn by Sullivan & Co.?

A. Wait a minute. Suppose he had a 1,000 dollar check to meet at the Empire Trust Co.—

Q. (Interrupting.) You mean drawn on the Empire Trust?

A. Yes. And he did not have sufficient money there to meet it.

but knew a check would be in on Monday. He would deposit a check, say for \$1,000, drawn on the National Metropolitan Bank in Washington.

Q. In whose favor?

A. In favor of the Empire Trust Co.; he would estimate the time that it would take that check to arrive in Washington and would get another check cashed at the Empire Trust Co., drawn on the same bank in Washington, for sufficient money to cover the check in Washington and wire that money down.

Q. So he would always have one check outstanding?

A. Yes.

Q. With nothing to meet it with?

A. That is the idea.

Q. And that slipped up one day?

A. Yes sir.

Q. Just before the 14th of October last?

A. Yes sir.

Q. And what happened?

A. Probably around the 1st of October; the Saturday before the 14th.

Q. What happened?

A. The check was returned from the National Metropolitan Bank to the Empire Trust Co., protested.

Q. And then what happened?

A. Easterday came to Washington and Mr. Bowls arranged a loan through Mr. Robert H. McNeill, and sent me to New York to straighten out the tangle. Another tangle was one at the Consolidated Stock Exchange, on account of a check being returned from Washington; a check payable to the Clearing House of the Consolidated Stock Exchange was returned to them, and I brought enough money up to straighten that out, so that we could do business on the Floor, about \$6,000. In the meantime the overdraft stood on the Empire Trust Co.; the check had not been returned.

Q. Then you really had to withdraw your account with the Empire Trust Co.; is that it?

A. Yes.

Q. And you got into trouble with the Consolidated Stock Exchange?

A. Yes sir.

Q. And you were suspended from the Consolidated Stock Exchange?

A. Yes sir.

Q. For how long?

A. Probably a week.

Q. Now, during all of this time, and up till about the 14th of October, 1919, were you in constant touch with Mr. Newman?

A. From what time?

Q. From the time you started your New York office down to about the 14th of October last.

A. Well, I was in Washington part of that time, and of course was in touch with the New York office over the wire.

Q. Well, what other matters did Mr. Newman handle for you during this time? You have told us about the Bishop matter.

A. He claimed a fee from Easterday, and eventually Sullivan & Co. assumed it, and paid it.

Q. Newman claimed a fee from Easterday in connection with the Chatham & Phenix National Bank matter?

A. Yes sir.

Q. How much was that, approximately?

A. Every time he would see you, he would demand anywhere from \$5 to \$100.

Q. How much did he get for this matter of Easterday?

790 A. It was never definitely settled to any fixed figure; he got it in dribbles. His services were not worth over \$100 all told. And we also paid him rent for the office at 10 Wall Street, which amounted to about \$100. He also claimed that he had been knocked out of renting the office to somebody else at a reasonable amount, and claimed that we had damaged it to some extent. He claimed he had suffered certain loss on account of renting that room to us.

Q. Did you pay for that?

A. We satisfied him in the way of giving a few dollars; it amounted to something less than \$50, for the loss.

Q. What else did he represent you in?

A. He also claimed that Easterday was going to loan him a few dollars to open an account. I do not know anything about that.

Q. Do you know anything else where Mr. Newman represented you?

A. No.

Q. Was he your general attorney in New York, or just called in for specific matters?

A. General.

Q. On a salary?

A. No. He was convenient there, and if he was of any use, we used him; he—if he was not of any use, we did not.

Q. Now will you tell us about the draft which Mr. Newman gave you of 5,200 some odd dollars?

A. I do not know anything about that.

Q. You do not know anything about that?

A. No, I do not know anything about that.

Q. Will you tell us about your relations with the Bankers Trust Co.; how the account was started, and what happened there?

A. Mr. Bowls opened that account.

Q. Do you know anything about that?

A. No.

Q. Well, that account was collateralized, wasn't it? Collateral put up?

791 A. No, not when it was opened. After it was opened, a loan was made there of \$25,000, which was reduced to \$21,000.

- Q. What collateral was put up?
 A. 100 shares of United Retail Stores temporary certificate; and 100 shares of Atlantic Gulf & West Indies.
 Q. You do not know the numbers?
 A. No.
 Q. Where did you get those shares that you have just referred to: 100 shares Atlantic Gulf & West Indies, and 100 shares United Retail Stores?
 A. I got them from Nick Cohen in Washington, D. C.
 Q. Can you fix the date?
 A. On the 14th of October 1919.
 Q. What happened to the Bankers Trust Co. account? You were asked to take it out, weren't you?
 A. The loan was called, and it was explained to me by Mr. Holt, I think, that they did not make a practice of doing business with brokers; the accounts were too active, and usually a broker wanted over-certification, and they did not extend that to anybody.
 Q. Then you opened an account with Secor, Weil & Co.? The account was taken over by Secor, Weil & Co.?
 A. I do not know about that.
 Q. Who had charge of that?
 A. Mr. Easterday.
 Q. What were Easterday's relations with Secor, Weil & Co.?
 A. He knew Mr. Hessberg there very well.
 Q. What is his first name?
 A. Ike.
 Q. And he had known him quite some time before the formation of the firm of Sullivan & Co.?
 A. Yes, he also knew Mr. Marion Weil I think.
 Q. Don't you know the details surrounding the transfer of the account from the Bankers Trust Co. to Secor, Weil & Co.?
 A. No.
 792 Q. Tell us just what you know about Secor, Weil & Co.
 A. I understood from Mr. Easterday that he had opened an account with Secor, Weil in order to assist us in clearing our stock.
 Q. What did Secor, Weil & Co. have to do with the Bankers Trust Co. transaction?
 A. Not a thing, until the loan was called.
 Q. Well, that is what I want.
 A. They took the loan up for us; drafted it down to Washington, from what I can understand.
 Q. Now, what happened with the account at the Seaboard National Bank?
 A. I opened that account after being introduced by Mr. Gunther.
 Q. Who is Mr. Gunther?
 A. He is in charge of the Clearing House of the Consolidated Exchange. I opened it by pledging some securities, and arranging a loan of \$55,000 on those securities.
 Q. When was this? Can you look at the books and fix the date?
 A. (After referring to books.) October 27th, 1919.

Q. What certificates did you put there? Read them off; the names, amounts and numbers.

A. 50 Reynolds Tobacco, Class B, No. E3199; 100 A. R. Common, No. 136416; 100 Endicott-Johnson, No. M322; 100 A. R. Preferred, No. 30670; 100 Pond Creek, No. N. Y. 689; 100 U. S. Food, No. 3383; 300 Pennsylvania, seven different certificates; 100 shares A. 650322; 100 shares A526278; 50 shares A408662; 35 shares A221275; 12 shares A430230; 2 shares A651028; 1 share A454812.

Q. What else?

A. That is all.

Q. Where did you get all of those stocks from?

A. I got them from Nick Cohen.

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Q. When?

A. On October 25th, 1919, in Boston.

Q. What happened to that stock with the Seaboard National Bank?

A. They called the loan, and Mr. Easterday made arrangements with somebody in Secor, Weil's office to pay this loan and draft it down through their bank to Sullivan & Co's. office in Washington, D. C. After the stock arrived, I understand Mr. Bowls arranged a loan with the Commercial National Bank in Washington, D. C.

Q. Now, who knows about that Newman draft?

A. Mr. Easterday.

Q. Only Mr. Easterday?

A. And possibly Mr. Browder.

Q. But not Mr. Bowls?

A. I do not think Bowls knows anything about it.

Q. Or you?

A. I only know from hearsay.

Q. Now everything ran along with Sullivan & Co. in good shape down to about September 27th last year; is that right?

A. That is right.

Q. To sum it up, you took in Mr. Longley as a figurehead, and dropped him and took in Mr. Bowls; Mr. Bowls put in money?

A. That is right.

Q. And he became an equal partner; and you opened up a New York office first with Mr. Newman at 20 Broad Street, and then at 10 Wall Street?

A. Yes, that is right.

Q. And Mr. Easterday was the big man behind the enterprise, because he was a man with brokerage experience?

A. That is correct.

Q. And you were not well, and you were away a great deal of the time?

A. Yes sir.

Q. And Mr. Bowls was in New York during August and September 1919, but Mr. Easterday was always there?

A. Yes sir.

794 Q. And you had no thought, up to September 27th 1919, of engaging in any improper transactions of any kind?

A. No sir.

Q. And it was some time after September 27th 1919 that you fell into the hands of Nick Cohen and Nick Arnstein?

A. That is so.

Q. And that was the commencement of your downfall?

A. Yes sir.

Q. What happened on or about September 27th last year which brought things to a head?

A. Mr. Easterday ordered the wire out of Mr. Greenwood's office, and Mr. Greenwood ordered the tickers in our Washington office out, precipitating a run on our office.

Q. In Washington?

A. In Washington. And we were unable to meet their demands.

Q. And then came the kiting of the checks?

A. Then came the kiting of the checks between New York and Washington, and the eventual failure to meet one of those checks.

Q. You mean at the Empire Trust Co.?

A. Yes sir.

Q. About which you have just testified?

A. Yes; and which helped cause Easterday to give a check or draft on Newman & Co.

Q. Well, before Easterday gave that check or draft on Newman & Co., Mr. Easterday and you went to Washington to visit Bowls; isn't that right?

A. Yes. When the check was returned he came to Washington.

Q. Whose checks?

A. The check that was returned to the Empire Trust Co., from the National Metropolitan Bank of Washington. He came to Washington to see what could be done.

795 Q. When you say "He" you mean who?

A. He, Easterday.

Q. Easterday and you?

A. No; I was in Washington at the time, and Easterday came to Washington to see what could be done to straighten matters out.

Q. What took place; what did you talk about?

A. The advisability of Mr. Bowls putting up any more money.

Q. Did he?

A. He did.

Q. Then what took place?

A. Mr. Bowls put up \$6,000. I brought it to New York and paid it to the Consolidated Stock Exchange to meet Clearing House differences to various members. But before we left Washington—Mr. Easterday came to New York with me on that trip; and he had received a telephone message from Randolph Newman a day or two previous to this, telling him that he knew a man in New York who had some stock that he would loan him to help tide us over, and that it could be gotten in such a way that it would be of great benefit to us.

Q. Did he say who it was?

A. No, he did not.

Q. Well, did you talk to Newman about it?

No, I did not.

Q. At no time?

A. I do not remember that I did, until afterwards.

Q. Well then, when did you first meet this party about whom Newman telephoned you?

A. I am bad on dates. It must have been the 12th of October 1919; Columbus Day.

Q. Tell us all that took place on Columbus Day last year, so far as you know?

A. Easterday told me he had an engagement with that party, with that man, and he told me that he was to meet him at the Bretton Hall Hotel, 86th Street & Broadway. And we tossed coins to see whether Easterday would meet him or whether I would meet
796 him; and I got stung.

Q. Now go right ahead.

A. So in accordance with their arrangement, I wore Easterday's yellow coat and met the man in the bar of the Bretton Hall Hotel; and he told me he did have for \$125,000 worth of stocks, or at least, he knew a man who did have those stocks; but the terms would have to be arranged with the other man.

Q. Now this man afterward turned out to be Nick Arnstein?

A. He afterwards turned out to — Nick Arnstein; yes; this man I was talking to turned out to be Nick Arnstein; and the other man who had the stocks turned out to be Nick Cohen. And Easterday came in about that time, and I told Easterday, and Easterday took the matter up from that time on and arranged with them for the stocks.

Q. You are sure this was the 12th of October 1919?

A. I am sure it is the 12th.

Q. That was on a Sunday?

A. No; that was on a Saturday, the 11th. I wish to correct my answer, and say that after looking at a calendar I am now sure that I met Nick Arnstein—not knowing his name at that time—in the Bretton Hall Hotel, 86th Street & Broadway, New York City, for the first time on Saturday night, October 11th 1919.

Q. Now go back please and tell us, to the best of your recollection, just exactly how that conversation happened; and what you said to him, to the best of your recollection, and what he said to you.

A. Well, there were a few preliminary remarks, remarks of greeting you know, recognition, between us; and he told me that I looked all right to him. I think he said I looked a little bit like a copper, but he was willing to overlook how I looked; I talked all
797 right. And I asked him if it was true that he had some method of giving us a lift; and I explained the situation, the shape the firm was in; what we would like to do; would like to borrow those stocks from him and pay him some kind of a bonus. So he said he was not in a position to make any arrangement about them; that I would have to see a friend of his who had these stocks.

Q. Did you ask him where he was getting them from?

A. No, I did not.

Q. Well, did he tell you?

A. No.

Q. Did you have any suspicion as to whether they were legitimate stocks?

A. Yes, I had a suspicion.

Q. What suspicion did you have? That they were regular or irregular?

A. The same suspicion that anybody would have had under the circumstances.

Q. Well what suspicion? We want to get that down.

A. Well, I knew there was something irregular about the stocks; that the stocks were stolen; I did not know exactly what.

Q. Now to go back a moment: This appointment was arranged by Mr. Newman and Mr. Easterday, for you?

A. I think so, yes—it was arranged for Mr. Easterday himself.

Q. By Mr. Newman?

A. I think so; through Mr. Newman anyway.

Q. You were telling us what he said to you and what you said to him; that is, Arnstein.

A. About this time Mr. Easterday walked in. I introduced Mr. Easterday, without mentioning any names on either side; and I waited for Easterday while he went to see whether the stocks were good enough; whether they were negotiable stocks; and while he made proper—

798 Q. (Interrupting.) You do not mean good stocks, good to be handled, you mean good stolen stocks?

A. Whether they were a good delivery stock.

Q. But stolen stocks?

A. I told you about what I suspected, but what I did not know. I did not inquire into it; but I knew it in my own mind. I waited for Easterday in his car while he went to examine those stocks to see whether they could be used or not. Easterday came back and told me they were absolutely all right; high class stocks, and properly endorsed. He told me he had made arrangements to pay a bonus of 25 per cent for the loan of those stocks; that they had \$100,000 worth of them; and that they would get in touch with us at the office, or it may be that I met Arnold afterwards; I am not just sure about that, and talked to him. And I am not sure that I did not talk to both of them that night myself; I am just a little teeny bit hazy about that. Easterday could probably tell you, and whatever he tells you you can weigh it, you see. I am just a little hazy whether the four of us at any time met, or whether I afterwards went back and talked to Arnstein and Cohen and Easterday. I know that I was not there when the 25 per cent arrangement was made; I am positive of that, because it would stick, you see. Easterday discussed the details of it, and afterwards told me he had made an arrangement of 25 per cent bonus on the market value; but I am not sure that I did not meet Arnstein and he told me that he wanted to do business with me, and that I impressed him, and that he would rather do business with one person. I think that Easterday explained that any loan that would be made, I would have to make it; that he could not go to the bank. And I think Arnstein said it would be much better to do business with one man, and said "If Sulli-

van has to arrange the loan, then he is the man we will do business with. I am favorably impressed with him anyway," or something of that kind. "And I will call you to-morrow or the next day or the next day." And I gave the telephone number. I am not sure that that did not happen. Easterday can probably help piece that out.

Q. Go on; tell us everything that took place that night.

A. Well, they called up—that night?

Q. Yes; stick to that one night first.

A. Well, that is all. I went down town with Easterday on the promise from Arnstein that he would call up the office when he was ready.

Q. Did he say what name he would use when calling you on the 'phone?

A. No, he did not. He said "I will just say it is the party you were talking to that night, and you will know my voice."

Q. When did you hear from him; the next day?

A. I do not think I heard from him until the second day. That was the 11th. On the 13th he told me to meet him at the Pennsylvania Station.

Q. He called you up on the 13th of October, 1919?

A. I think so, yes.

Q. That was on a Monday?

A. Yes, I think so.

Q. Where did he call you; at your office?

A. Yes. He said he had everything arranged, and wanted to take a trip to Washington, and asked me to meet him at midnight in the Pennsylvania Station, but afterwards, I think he said "I will meet you at the Willard Hotel." I am not sure that he called me

800 at the office. He may have called me up at Easterday's home.

I am not sure that we did not make an agreement, or that Easterday did not tell him to call up at a certain time, at his home; because he did call his house a number of times, 264 Riverside Drive.

Q. Go on. He called you the second time on the 13th of October last and asked you to meet him at the Pennsylvania Station and you would go to Washington together; is that right?

A. Yes.

Q. Did he say who it was on the 'phone? Did he give any name?

A. No. That was Cohen.

Q. Didn't he say "This is George"?

A. Possibly.

Q. Is not that the name that you and he agreed upon?

A. I do not know that we did that early in it. After the Washington meeting he always used the name George.

Q. In Washington he went under the name of George Wall, did he not?

A. Yes. And I went to Washington as per the agreement, and I met him at the Willard Hotel at 9 o'clock on October 14th, 1919.

Q. That was the third meeting; that was Tuesday, October 14th, 1919, that you met Arnstein, known also as Arnold, at the Willard Hotel, Washington, D. C.?

A. Yes sir.

Q. Now please state what took place that day; everything.

A. I met him at the Willard Hotel, and in a short conference it was decided that Cohen should walk into the Washington office and open an account with some securities pledged as collateral, and buy a certain number of shares of Steel. And I went into the office about five or ten minutes of ten, and after I had been there a few minutes he walked in and asked for Mr. Drain; and Mr. Drain took him in the side office, and afterwards took him up to the private office upstairs; and he called me up there and introduced me to him as Mr. Wall. Mr. Wall signed an order to buy 100 shares of U. S. Steel at the opening, which order was turned over to John T. Dooling in Washington on Sunday, March 7th, 1920; that is in Cohen's handwriting; the slip is signed "George Wall," to buy 100 shares of Steel.

Q. Now, certain stock was put up as collateral on this order?

A. Yes sir.

Q. And that was stolen stock, was it not?

A. It turned out to be.

Q. And at the time that Wall put it up—that is, Cohen,—you sincerely believed it was stolen stock?

A. I had reasons to believe it was, yes.

Q. And you were going into this deal with Cohen and Arnstein because you were hard pressed?

A. Yes sir.

Q. The firm was in straitened circumstances?

A. Yes sir.

Q. Under great financial stress?

A. Yes sir.

Q. And you were grabbing for a straw, something to hold on to before going down; is that right?

A. That is true.

Q. You had dropped all the money of your friends in there?

A. Yes sir.

Q. You had dropped a large sum of money of Eli Sheetz?

A. Yes, sir.

Q. Approximately how much?

A. \$35,000.

Q. And Mr. Bowls and his father had dropped about how much?

A. \$50,000.

Q. And other friends in Washington had dropped considerable?

A. Yes, some.

802 Q. And you were making a last effort to save the business from bankruptcy?

A. True.

Q. And you thought you would go into this one deal with these men, Nick Cohen and Nick Arnstein?

A. Yes sir.

Q. Hoping that you would be able to pay them back promptly?

A. Yes sir.

Q. And not continue any such transactions?

A. No.

Q. And hoping that the market would turn in your favor?

A. That is right.

Q. And that Mr. Easterday would not explode so much?

A. Yes.

Q. And that the firm would come out all right?

A. That is true, absolutely.

Q. So we bring ourselves down to date, and get our records straight, your best recollection is that the first time you met Cohen and Arnstein was on Saturday night, October 11th last year?

A. Correct.

Q. At the Hotel Bretton Hall, 86th Street & Broadway, New York City?

A. Yes sir.

Q. The next time you met Cohen was two days later?

A. Yes sir.

Q. At the Pennsylvania Station?

A. Yes sir.

Q. That you and he went to Washington together?

A. Yes sir.

Q. Arnstein was not along?

A. Oh yes, Arnstein was along. We did not go together.

Q. Now let us have that clear. Did you meet them both at the Pennsylvania Station?

A. I saw them at the Station, and I think there was a word or two passed between either Arnstein and myself or between Cohen and myself—I am not sure which one—and it was understood that I was to be in Washington, at the Willard Hotel, at 9 o'clock.

Q. And you went your way and they went their way?

803 A. Yes sir.

Q. Then you met them both at the Willard Hotel the next morning; that would bring it down to October 14th last year; is that right?

A. Yes.

Q. That was the third meeting?

A. Yes sir.

Q. Then you and Cohen, in the presence of Arnstein, had this understanding to open the George Wall account with your Washington office?

A. Yes.

Q. As you did not want Mr. Michael Drain, who had charge of the Washington office, to know anything about it?

A. That is true.

Q. So that you arranged with Mr. Cohen, in the presence of Mr. Arnstein, that Mr. Cohen should go down there and open that account in the name of George Wall, giving a certain Washington address; is that right?

A. That is true.

Q. And you always supposed that Mr. Drain did not know anything about it?

A. I know he did not. Not only did not know it, but he did not even suspect it.

Q. Now then, this account was opened in Washington, account No. 192 on your books?

A. That's right.

Q. In the name of George Wall, address 2117 O Street, Washington, D. C.?

A. Yes sir.

Q. Was it you or was it Mr. Arnstein or was it Mr. Cohen who suggested the name George Wall?

A. I am not certain about that, but I think I suggested it.

Q. Did you have any reason for using that name?

A. None whatever.

Q. Who was it that suggested that the account be opened by giving an order for the purchase of 100 shares of U. S. Steel; do you recall that?

A. It was as the result of a conference.

Q. In whose handwriting are these entries here under this account 192 on your ledger? (Indicating.)

A. That is Browder's.

Q. This account shows: October 14th, order for 100 shares of U. S. Steel at 1105/8; is that right? (Indicating on ledger.)

A. That is right.

Q. The purchase price being \$11,077.50?

A. That is right.

Q. And that this man, Nick Cohen, alias George Wall, put up as collateral for that order, the following shares of stock: 200 shares of A. G. W., certificates No. 5963 and 5964; is that right?

A. Yes sir.

Q. 300 St. Louis & San Francisco, certificates numbers 2116, 6283, and 5443; is that right?

A. Yes sir.

Q. Now, is that all that took place, to the best of your recollection, on that day, October 14th 1919?

A. Oh, no.

Q. What else took place?

A. Drain wanted to arrange a loan at the bank because we needed money, and he went over to see the National Metropolitan Bank cashier and was refused a loan on the stocks. So I went over and had a talk with them, and they also refused to loan me.

Q. Who did Mr. Drain see there?

A. I guess he saw Mr. Jacobson.

Q. And who did you see?

A. I saw Mr. Jacobson; and then afterwards I saw Mr. White, the president.

Q. What happened?

A. He refused to make the loan.

Q. What did you want the loan on? On what stock; these shares that you just testified to?

A. Yes.

Q. 300 St. Louis & San Francisco and 200 A. G. W.?

A. Yes. So I met an employee of the Riggs National Bank and told him I needed some money, and I had securities, and he re-

ferred me to somebody—I cannot recall now—in the Riggs
805 National Bank, and told me to use his name. And I did see
this Mr. Somebody, and he referred me—in fact he introduced
me to Mr. William Flathers, one of the officers of the Riggs National
Bank. And Mr. Flathers agreed to loan me \$20,000—he first had a
little conference with Mr. Glover, president of the bank; and the
\$20,000 went to my own personal credit, after I explained that I was
in the brokerage business, and Mr. Bowls was out of town, and
probably it would be wise to transfer the account to the credit of
Sullivan & Co.

Q. Now let us get this straight: What office does Mr. Flathers
hold there?

A. Vice President.

Q. You told him that you were of the firm of Sullivan & Co.?

A. Yes sir.

Q. And that the firm had these shares, 200 St. Louis and San
Francisco and 300 A. G. W.?

A. Yes sir.

Q. And that Mr. Bowls was away?

A. Yes.

Q. And that the firm needed some money?

A. Yes sir.

Q. And that you had to have the money that day?

A. No, I did not tell him that. I did not tell him I had to have
it. I told him I would like to arrange a loan of \$20,000.

Q. What was the value of that stock at that time?

A. About \$45,000.

Q. So you opened an account and they placed \$20,000 to your
personal credit?

A. Yes sir.

Q. And then you drew the \$20,000 out?

A. No. I told him that I had to draw some of that money, and
most of it, in fact; and I did draw \$16,000 in cash.

Q. What did you do with that?

A. I gave Nick Cohen \$10,000.

806 Q. In Washington?

A. Yes.

Q. At the Willard Hotel?

A. No; at the telegraph office on 14th Street.

Q. In bills?

A. Yes.

Q. And what did you do with the balance?

A. And \$5,000 I wired to Sullivan & Co's. office in New York; and
that \$5,000 went into the Bankers Trust Co. to help straighten out
the trouble with the Empire Trust Co.

Q. And the other \$1,000?

A. I am uncertain; but it went into the business in Washington.

Q. Then \$4,000 still remained there?

A. Yes sir.

Q. And it is there to-day?

A. Oh no.

Q. That has since been drawn out?

A. The account was transferred to Sullivan & Co., as per letter that I wrote down to Mr. Glover, and Mr. Bowls opened an account in the name of Sullivan & Co., and I signed the signature card and he signed the signature card.

Q. What became of that collateral?

A. The collateral remains in the bank, and has never been changed. And on or about the 13th of November 1919 they notified us that they were going to sell out the account, and did offer it for sale. We since learned that transfer had been stopped on the certificates, and to our best knowledge and belief, the stock is now with the Riggs National Bank of Washington, D. C., where it was originally collateraled. There has been no change in it, so far as we know.

Q. You testified before that Mr. Bowls opened another account there in the name of Sullivan & Co.?

A. Yes; I testify to that now; transferred it.

Q. Was this transferred?

A. Yes.

Q. Were there new moneys deposited?

A. Yes.

Q. And new loans made?

A. Yes; one new loan.

Q. On different new collateral?

A. Yes.

Q. Now what else took place with Cohen and Arnstein that day? Anything that you can recall?

A. No. Cohen told me that he—oh yes; wait a minute; So when I gave him the \$10,000 he gave me some more stocks.

Q. What did he give you?

A. 300 shares of A. G. W.; 100 shares of Retail Stores temporary certificates.

Q. Do you know the numbers of the A. G. W. stock?

A. No. There is no record of that.

Q. Do you know the number of the temporary certificate?

A. There is no number on the stock; but the stock is now in the Commercial National Bank, 200 shares of A. G. W. collateraled for an original 28,000 dollar loan, which has since been reduced to \$25,000. 100 shares of A. G. W. was brought by me to New York, and together with the temporary certificate of Retail Stores, was pledged as a loan at the Bankers Trust Co. on October 16th 1919 for \$25,000, which loan was reduced on November 12th 1919 by the payment of \$4,000, leaving a balance of \$21,000 on those two certificates. That loan was taken up by Secor, Weil, to attach the same to a sight draft of \$21,000, and sent out to Washington, D. C., which draft was returned by Mr. Bowls unpaid, and the stock is now at Secor, Weil's.

Q. Now, didn't Mr. Cohen stay over to the next day?

A. I do not think so. But I am not sure about it.

Q. What is this entry here in your ledger: October 15th? (Indicating in ledger.)

A. October 15th, that is a buy order for the U. S. Steel; 1,000 shares of Steel. It was 1,000 shares, but it was executed at different prices.

Q. 300 were executed at $108\frac{7}{8}$, \$32,707.50; and 700 were executed at 109, \$76,405?

A. Yes sir.

808 Q. What I want to find out is this: I notice here, under date of October 15th 1919, a purchase by your firm for the account of George Wall of 1,000 shares of Steel as follows: 300 at $108\frac{7}{8}$ and 700 at 109. I want to know from you what it is all about?

A. I do not know for sure, but I imagine that is one of Mr. Easterday's trades, to carry out the general plan of his Wall account.

Q. Just give in a little more detail; what do you mean by one of Mr. Easterday's plays? You know that Nick Cohen never ordered those 1,000 shares of steel?

A. I do not think so.

Q. But Mr. Easterday, in order to have the account appear proportionately correct, and therefore legitimate on the books—(Interrupting.)

A. In order that Mr. Drain or Mr. Browder would not suspect anything, he, Mr. Easterday, put it on the books.

Q. And Mr. Easterday put on the books, or ordered it put on the books, this order for 1,000 shares of Steel?

A. It was not only put on the books, but actually was bought and sold.

Q. Then the new purchase on October 15th 1919 of 1,000 shares of U. S. Steel was collateraled by some other stock?

A. Yes; additional security.

Q. By 300 shares of A. G. W. and 100 shares of Retail Stores temporary certificate?

A. That is correct.

Q. And who received the physical custody of those 400 shares; Mr. Drain?

A. I did.

Q. Whom did you hand them to?

A. I handed 200 shares of A. G. W. to Mr. Bowls and kept 100 shares of A. G. W. and 100 shares of Retail Stores, and brought them to New York.

Q. And put them with who?

A. The Bankers Trust Co.

Q. The 400 shares about which you have just testified,
809 300 A. G. W. and 100 R. W. temporary certificate, were handed to you by Nick Cohen in Washington after he first saw from you the color of some money, namely \$10,000 in cash which you had previously drawn from the Riggs National Bank on the 200 shares of A. G. W. and 300 St. Louis and San Francisco?

A. That is correct.

Mr. Myers: I offer in evidence this account No. 192 and ask to have it spread at length upon the record.

Marked Exhibit 1 of this date, reading as follows:

Account No. #192.

Name: George Wall.

Address: 2117 O St. Washington, D. C.

Date.		Debits.
Oct. 14.	100 x 110 ⁵ / ₈	\$11,077.50
	200 A. G. W. Certs. 5963-4 Recd.	
	300 St. L. & S. F. Certs. 2116	
	6283	
	5443 Rec'd.	
15.	300 x 108 ⁷ / ₈	32,707.50
	700 x 109.....	76,405.00
	300 A. G. W. Rec'd.	
	100 R. S. Temp. Cctf. Rec'd.	
[14.	Cash	10,000.00]*
15.	"	10,000.00
17.	"	15,000.00
30.	"	7,500.00
	" from N. Y.....	10,000.00
	Interest to date.....	386.90
		<hr/>
		\$163,076.90

31.	Long.	
	1,100 x.	
	500 A. G. W.	
	300 St. L. & S. F.	
	100 R. S.....	\$163,076.90
Nov. 1.	200 x 109.....	21,830.00
6.	100 Mnp.	
	20 B/L Rec'd.	
7.	Cash Wash.	20,000.00
10.	" "	8,000.00
	" by D. W. S.....	11,000.00
	50 B/L.	
	100 Cru. Rec'd.	
11.	Cash N. Y.....	5,000.00

(The following appears on the right hand side of sheet:)

810		
Date.		Credits.
Oct. 14.	To balance	\$163,076.90
		<hr/>
Oct. 12.	100 x 103 ⁵ / ₈	10,343.50
	900 x 103 ⁷ / ₈	93,316.50
	300 x 103 ³ / ₄	31,068.00"

Words and figures enclosed in brackets erased in copy.]

Q. What is this entry on George Wall's account, "October 15, \$10,000"? (Indicating.)

A. That is the \$10,000 he drew in Washington I imagine.

Q. No; that is credited to his account; that is not a withdrawal.

A. That is a credit?

Q. Yes; that is a credit. What does that mean?

A. In brokerage accounting, the collateral that is put up as margin by the customer is carried short on the debit side of the account. That is, it is not carried out in the money column. When any figures appear in the money column, that indicates that the customer is debited by that amount, or charged.

Q. Therefore, your answer to that question as to what the item "October 15, \$10,000" means, is that it represents \$10,000 paid to George Wall or Nick Cohen?

A. Yes sir.

Q. And you make the same answer about this entry "October 17, \$15,000"? (Indicating.)

A. That is correct.

Q. And "October 30, \$7,500"? (Indicating.)

A. That is correct.

Q. And "\$10,000"? (Indicating.) Is that right?

A. That is correct; less 500 which I held out on the 7,500 dollar item; I only gave him \$7,000 cash.

Q. And where was this \$10,000 paid on October 15th 1919?

A. No; I gave him \$17,000.

811 Q. Yes; but where did you pay this \$10,000 on October 15th?

A. Washington.

Q. In cash?

A. Yes; but it appears on the books as the 15th, but it actually was paid on the 14th of October 1919.

Q. Where did you pay this \$15,000 on October 17th 1919?

A. Well, I do not remember. It is in New York though.

Q. In cash?

A. Yes.

Q. Can you say where in New York?

A. I do not recall.

Q. That is the first money you paid in New York. Where did you pay it?

A. I am not sure, but I think I paid it in Hoboken.

Q. Where in Hoboken?

A. I think it was in a bar.

Q. Where?

A. About three squares from the Lackawanna Station.

Q. Was that pursuant to previous arrangements, that you should pay it there?

A. No. They called me on the telephone; kept in touch with me; he wanted his money.

Q. Why was that paid in Hoboken instead of New York?

A. Just a convenient place to meet. That was because it was in the middle of the day. I imagine, any time he wanted to see me during the middle of the day or during business hours.

would usually accommodate himself to me and meet me downtown; and he met me over in the Lackawanna Station, which I believe happened three or four times.

Q. Where was this \$17,000 handed to him?

A. I handed it to him on Broadway, up around 80th Street, or somewhere around there, right on the corner.

Q. On or about October 30th 1919?

A. Yes sir.

Q. What does this mean here: "October 31, Long 1,100 U. S. Steel?" (Indicating.)

A. That is summing up. This account had been closed; they balanced the account at the first of the month and then it appeared that the Wall account was long of these stocks.

Q. Read that please?

A. (Reading:) 100 Steel, which had been purchased; they were long of that. And they were also long of the collateral that was put

up—
Q. (Interrupting.) Namely, 500 A. G. W.

A. Yes.

Q. And 300 St. Louis & San Francisco; and 100 Retail Stores?

A. Yes sir.

Q. Now then, what is this entry? "November 1st, 1919, 200 U. S. Steel?" (Indicating.)

A. That is the purchase of 200 shares at 109, at a cost of \$21,830; it represents a speculation of Easterday.

Q. What is the entry: "November 6th, 100 Mexican Petroleum and 20 shares of Baldwin Locomotive"? (Indicating.)

A. That is additional collateral that was put up.

Q. Where did the 100 shares of Mexican Petroleum and the 20 shares of Baldwin Locomotive come from?

A. I received them from Nick Cohen in Boston, if I remember it right.

Q. And you handed them over to Mr. Browder in New York?

A. Yes.

Q. Is that right?

A. Yes; or Mr. Easterday.

Q. You do not remember which?

A. No; handed them into the office.

Q. What does this entry mean: "November 7, Cash, Washington 20,000"?

A. Oh, I brought \$20,000 up from Washington, cash.

Q. And you gave it to whom?

A. I gave it to Cohen.

Q. In New York?

A. Yes sir.

Q. Where?

A. I do not remember, I think it was in that park opposite the Hotel Endicott.

Q. Near his residence?

A. In that little park right in front of the Hotel Endicott?

Q. "November 10th" it says here, "Cash, Washington, 20,000." What does that mean? (Indicating.)

A. That is \$8,000 I brought up from Washington; or maybe it was wired up; I am not sure.

Q. And you gave that to Cohen?

A. Yes sir.

Q. Where; New York?

A. Yes; in New York.

Q. You don't know what part?

A. I don't remember.

Q. And the same date, \$11,000; it says "By D. W. S." (indicating).

A. Yes; I gave him that too.

Q. What does that "D. W. S." mean?

A. Well, he just put that down there, that he gave me \$11,000. That is Browder drew \$11,000 out of the bank and gave it to me.

Q. What is your explanation now about this \$11,000?

A. I told Browder to draw me \$11,000.

Q. And you gave it to Cohen?

A. And I gave it to Cohen.

Q. Where?

A. In New York; I don't know where.

Q. "October 10th, 50 shares of Baldwin Locomotive and 100 shares of Cru." (Indicating). Where did you get these shares, 50 B/L and 100 Cru; from Cohen?

A. Yes; I got them from Cohen.

Q. Where?

A. I don't know whether I got them in Boston or Philadelphia.

Q. What do you know about this entry: "November 11, Cash N. Y., \$5,000"? (Indicating).

A. I drew it and gave it to Cohen.

Q. In New York?

A. In New York.

Q. You don't know where?

A. No.

Q. I want to review the various visits that you have had with Cohen and Arnstein in reference to stock. That is to say, I want to find out how many times you met Cohen and Arnstein and received shares of stock from them. Am I right in saying
814 that the first place that you received any shares from them was in the City of Washington on October 14th 1919?

A. That is correct. And on the 25th, in Boston.

Q. And the second was in Boston on the 25th of October 1919?

A. Yes sir, that is right. And the third was on the 5th or 6th of November 1919.

Q. In Philadelphia?

A. Yes.

Q. And the fourth was in Baltimore on November 8th or 9th 1919?

A. That is right.

Q. Will you please read into the record all the shares of stock which you received from Cohen and Arnstein in Washington on October 14th 1919?

A. I received from Nick Cohen in Washington on October 14th 1919, 500 shares of A. G. & W., certificates No. 5963-4 (200 of which are now in the Riggs National Bank, Washington; 200 in the Continental Trust Co., Washington; and 100, Secor, Weil & Co., New York). And 300 shares of St. Louis & San Francisco, certificate Nos. 2126, 6283 and 5443 (Riggs National Bank, Washington). And 100 shares of Retail Stores temporary certificate, the number of which I do not know (Secor, Weil & Co.). All for the account of George Wall.

Q. Now please state what you received in Boston on October 25th 1919 from Cohen and Arnstein?

A. I received 200 shares of Ohio Gas, N. Y. certificates 24538, 29502, (Riggs National Bank, Washington). 100 shares of Studebaker, certificate No. N. O. 22985 (Riggs National Bank, Washington). 100 shares of Texas Company, certificate No. C24872 (Franklin Trust Co., Philadelphia). 100 shares of Republic Iron & Steel, certificate No. C38305 (Riggs National Bank, Washington). 100 shares of Worthington Pump, certificate No. C1314 (District Attorney's Office, N. Y.—Consolidated Stock Exchange, N. Y.).

815 The above were for the account of Steele. 100 shares U. S. Food, certificate 3383 (Continental Trust Co., Washington); 100 shares Pond Creek, No. 689 (Continental Trust Co., Washington); 100 shares A. R. Common, No. 136416 (Continental Trust Co., Washington); 100 shares of A. R. Preferred, No. 30670 (Continental Trust Co. Washington); 100 shares Endicott-Johnson Common, No. M322 (Continental Trust Co., Washington); 50 shares Reynolds Tobacco, E3199 (Continental Trust Co., Washington.) 300 shares of Pennsylvania, in seven certificates; 100 shares, A650322; 100 A526278; 50 A408662; 25 A221275; 12 A430230; 2 A651028; 1 A454812 (All in Commercial Trust Co., Washington). The above for the account account of Charles Enright. In Philadelphia on November 5th or 6th 1919 I received the following shares of stock from Cohen and Arnstein: 100 shares Mex. Pet. (number unknown) (Continental Trust Co., Washington) 50 shares of Baldwin Locomotive, (number and present location unknown) 100 Crucible (Number and present location unknown). The above for the account of George Wall. 100 shares Mex. Pet. No. N. Y. 22942 (Franklin Trust Co., Philadelphia); 100 shares Mex. Pet. No. N. Y. 23497 (Franklin Trust Co., Philadelphia); 50 shares Mex. Pet. No. N. Y. 040443 (Franklin Trust Co., Philadelphia); 50 shares Mex. Pet. No. N. Y. 040595 (Franklin Trust Co., Philadelphia). 100 shares Crucible Steel Co. N. Y. 9886 (Franklin Trust Co., Philadelphia); 100 shares of Guffey, N. Y. 2083 (Franklin Trust Co., Philadelphia); 30 Baldwin Locomotive, N. Y. 016648, 016607, 018107 (Franklin Trust Co., Philadelphia). All the above for the account of Elmer E. Steele. 100 shares Mex. Pet. No. 23963 (District Attorney's office, N. Y.); 100 shares of Crucible N. Y. 8810 (Equitable Trust Co., N. Y.); \$1,000 Bond, Iowa Central (Transfer stopped). In Baltimore, on November 8th or 9th 1919 I received the following shares of stock from Cohen and Arnstein: 100

shares of A. F. No. 56630 (Secor, Weil & Co.); 100 shares of D. & R. Preferred, No. 7643 (District Attorney's Office, N. Y.); 20 shares of D. & R. Preferred, No. 010994 (District Attorney's Office, N. Y.); 80 shares of D. & R. Preferred, No. 0880 (District Attorney's Office, N. Y.); 100 shares of W. L. & E. C4204 (District Attorney's Office, N. Y.); 100 shares of Goodrich C24232 (Secor, Weil & Co.); 100 shares Am. Int. N. Y. 1326 (or 1386) (Secor, Weil & Co.); 100 shares Am. Int., N. Y. 3436 (Secor, Weil & Co.); 400 shares Union Pacific, 323943, 323942 (District Attorney's Office, N. Y.); 324017, 324016 (Secor, Weil & Co.). The above for the account of Charles Enright. 100 shares of Union Pacific, No. 333176 (Franklin Trust Co., Philadelphia); 200 shares of Goodrich No. 24231 and 24233 (Franklin Trust Co., Philadelphia) 100 shares of American Beet Sugar, No. 1045937 (or D45937) and 1047728 (or D47728) (Franklin Trust Co., Philadelphia). The above for the account of Elmer E. Steele.

Q. What was the market value of all of those shares of stock which you received from Cohen and Arnstein in Washington, Boston, Philadelphia, and Baltimore?

A. Approximately, the market value at that time was \$600,000.

Q. Did you receive those shares of stock in Washington on October 14th 1919 about which you have testified, from Cohen or from Arnstein?

A. From Cohen.

817 Q. Was Arnstein present?

A. No.

Q. He did not see the certificates passed to you?

A. No.

Q. Did you afterwards tell him that you had received them from Cohen?

A. Tell who?

Q. Arnstein?

A. It was understood——

Q. (interrupting): No. So far as you know, did Arnstein know at that or at any other time, that you had received those shares of stock from Cohen in Washington on October 14th 1919?

A. No, he did not see them passed.

Q. Well, did you ever afterwards tell him that you had received them from Cohen?

A. I do not know that I made the direct statement telling him that I received them; but we discussed it.

Q. That is what I mean. You afterwards discussed the fact that you had received those shares from Cohen?

A. Yes; it was an acknowledged fact on both sides.

Q. So that some time afterwards, whether it was on that day or not, Mr. Arnstein did know that you had received those shares of stock from Mr. Cohen?

A. Oh yes.

Q. Do you make the same answer in reference to the Boston transaction on October 25th 1919?

A. Yes sir.

Q. The shares were actually handed over to you by Cohen without the presence of Arnstein?

A. In Boston, yes.

Q. But that was afterwards discussed by and between you and Arnstein?

A. Yes sir.

Q. And Arnstein was informed by you that you had received those shares of stock from Cohen?

A. Arnstein was informed by me? Yes. As I say, it was discussed pro and con and every other way.

Q. Let us come to Philadelphia.

A. I had a room in the Bellevue-Stratford Hotel; I think I stayed over night, and I met them in the lobby and they came up to my room. Both of them were present when the stocks were delivered.

Q. They were delivered by Cohen in your room in the Bellevue-Stratford Hotel in Philadelphia, in the presence of Arnstein; is that right?

A. Yes sir.

Q. Now about the shares that were delivered to you in Baltimore on November 8th or 9th 1919; were they delivered by Cohen to you?

A. The check for the grip, which was left at the parcel room of the Pennsylvania Station in Baltimore, was given to me by Cohen.

Q. And that grip contained those certificates.

A. The stocks, yes sir.

Q. And what did Arnstein know about that?

A. Well, there was very little discussion about those stocks, because I have never seen those stocks. I went to Washington, and they were supposed to come to Washington, but they did not show up; they did not keep their appointment. I was supposed to meet them at the Willard Hotel; and I went there, and they were not there.

Q. Why not?

A. Well, they were not there.

Q. Do you know why not?

A. I do not recall. I figured at that time "Well, we won't go to Washington; we will see him at New York."

Q. Now as I understand you, your agreement with these two men, Arnstein and Cohen, was that you would pay them 25 per cent of the market value of these securities, for the use of these certificates by you and your firm; is that right?

A. Yes, that is correct.

Q. And was that agreement carried out?

A. As far as it was possible to carry it out, yes. It was carried out on the first transaction, and was carried out on the second, and it was partially carried out on the third. On the third one it was to be carried out, but we did not pay them all; we still owed them about \$12,000; and on the fourth transaction they never got anything, because the trouble broke before they got their money.

Q. Can you say how much money you paid to these two men all out of these four transactions?

A. Well, according to the books it amounts to between 100,000 and \$125,000.

Q. Are the books correct?

A. Absolutely.

Q. Can you say how much you paid them in New York? Will you please look at the books and add it up and testify?

A. Browder added it up once, and he shows there is \$86,500 of payments on the Wall account; and on the Steele account it shows \$12,200; and on the Enright account it shows \$16,000; making an aggregate of \$114,700.

Q. How much of this was paid by you to Cohen and Arnstein in New York?

A. Well, when you say New York do you mean Hoboken?

Q. No.

A. Well, all was paid in New York except \$10,000 paid in Washington, and the \$5,000 paid in Hoboken. I made the first payment of \$10,000 in Washington; and then I made a payment of \$15,000 at the Lackawanna Station in Hoboken I think; and then I made another 5,000 dollar payment I believe in Hoboken. And the balance of it was paid in New York City.

Q. That is to say, \$30,000, to your best recollection was paid out of New York, and the balance in New York?

A. Yes sir.

Q. Can you state more accurately the times and places where you paid the moneys?

A. Well, I remember once paying him \$17,000.

820 Q. When and where?

A. I am not sure whether it was \$16,000; on Broadway and eighty something street. I could pick the point.

Q. Near the Endicott Hotel?

A. No; near the Bretton Hall Hotel; south of that.

Q. What is the next?

A. And I remember paying him some money—I am not sure how much—that \$7,500 I paid him in that park in front of the Endicott Hotel. There was \$5,000 paid to Arnstein in the Red Lion Café on Pine Street. Now I distinctly remember those; but the balance of them is hazy to me.

Q. Can you fix the time of the payment of the \$17,000?

A. I ought to be able to, from this book (indicating).

Q. Look at the book please and state.

A. The times and amounts paid by me to Wall are shown on the account called "George Wall, No. 192" as heretofore offered in evidence and marked Exhibit 1 of this date (indicating).

Q. Will you please explain what this account is: "Elmer E. Steele, N. Y. Account No. 6" (indicating)?

A. It is a fictitious, or what is known as a dummy account.

Q. There is no such person as Elmer E. Steele?

A. No sir.

Q. For whom does that account stand?

A. It stands for Nick Cohen.

Q. The first item is October 25, 200 Ohio Gas, Certificate N. Y. 24538 and 29502" (indicating)?

A. Yes sir. And "100 shares of Studebaker, N. Y. 22985. 100 shares of Texas Company, C24872. 100 Republic Iron & Steel, 38305. 100 Worthington Pump, C1314."

Q. What does that mean, that entry?

A. That is a margin account, or put up as collateral, against which certain cash was drawn, and on which certain trades were put through.

821 Q. These are some of the stolen shares; is that right?

A. Yes sir.

Q. Which you received from Cohen and Arnstein?

A. Yes.

Q. What is the next item: "Cash \$10,000, October 28th" (indicating)?

A. This \$10,000 was paid to Nick Cohen.

Q. By you?

A. Yes.

Q. And "October 30th, 200 shares U. S. Steel, 107¾" (indicating)?

A. That 200 shares of Steel was bought as a wash sale, speculation.

Q. What does this mean: "November 5th, 50 shares U. S. Steel, 111½" (indicating)?

A. I think that is the same.

Q. What does this mean: "November 6th" (indicating items)?

A. November 6th, that was 300 shares of Mexican Petroleum received in four certificates; 100 shares, certificate N. Y. 22942; 100 shares, 23497; 50 shares 040443; 50 shares, 040595. 100 shares of Union Pacific, 333176. 200 shares of Goodrich, No. 24231 and 24233. 100 shares of A. B. S., in two 50 share lots, D45937 and D47728. 100 shares of Crucible, N. Y. 8886. 100 shares of Guffey, N. Y. 2083, 30 shares of Baldwin Locomotive in 10 share lots: N. Y. 018107; N. Y. 016648; N. Y. 016607.

Q. Now, those were all stolen certificates, weren't they?

A. Yes sir.

Q. That you had received from Cohen and Arnstein?

A. Yes sir.

Q. And you put those up in this fictitious account so as to have it appear that Cohen and Arnstein were dealing with you under the name of Steele?

A. Yes sir.

822 Mr. Myers: I offer this sheet, Elmer E. Steele, N. Y. Account No. 6, in evidence and ask that it be spread at length upon the record.

Marked Exhibit 2 of this date, reading as follows:

Account No. N. Y. #6.

Name: Elmer E. Steele.

Address: Hotel Commodore, N. Y. C.

Date.				Debits.
		N. Y. 24538		
Oct. 25.	200 O. G.	Cert. 29502	} Rec'd as Margin	
	100 Stu.	" N. Y. 22985		
	100 Texas Co.	" C 24872		
	100 Republic	" 33305		
	100 Wor.	" C 1314		
28.	Cash			\$10,000
30.	200 x 107 $\frac{3}{4}$			21,580
Nov. 6.	100 Mnp.	Cert. N. Y. 22942	} Rec'd as Margin	
	6. 100 "	" 23497		
	6. 50 "	N. Y. 040443		
	50 "	" 040595		
5.	50 x 111 $\frac{3}{8}$			5,573.75
	100 Un. Pac.	333176		
	200 Gr.	24231-24233		
	100 A. B. S.	D45937-D47728		
	100 Cru.	N. Y. 8886		
	100 Guffey	N. Y. 2083		
	30 B. L.	N. Y. 016607		
		N. Y. 018107		
		N. Y. 016648		
10.	400 R. B. C. 121 $\frac{1}{2}$			48,660
	100 B. L. 132 $\frac{1}{4}$			13,245
	100 R. T. 104			10,415
11.	100 B. L. 127			12,720
12.	500 X. 105			52,575
14.	Cash			2,000
	"			200

(The following appears on right hand side of sheet:)

Date.		Credits.
Nov. 12.	200 X. 103 $\frac{3}{4}$	\$20,712
	50 X. 106	5,290.50
	400 R. B. C. 108 $\frac{1}{2}$	43,324
13.	100 R. T. 96 $\frac{1}{8}$	9,596.94
	100 B. L. 105 $\frac{1}{4}$	10,506
	100 " 105 $\frac{1}{4}$	10,506
	500 X. 103 $\frac{7}{8}$	51,842.50"

823 Q. Now, is this account of Charles Enright, N. Y. No. 7,
also fictitious (indicating)?

A. Yes sir.

Q. And on the debit side it is shown that a certain number of shares of stock were received (indicating). Were those all stolen securities?

A. Yes sir.

Q. And received by you from Cohen?

A. Yes sir.

Q. And Arnstein?

A. Yes sir.

Q. And the payments there were made by you to Cohen and Arnstein?

A. Yes sir.

Mr. Myers: I offer this account of Charles Enright, N. Y. No. 7, in evidence, and ask that it be spread at length upon the record.

Marked Exhibit 3 of this date, reading as follows:

Account No. N. Y. #7.

"Name: Chas. Enright.

Address: Hotel Commodore, N. Y. C.

Date.	Debit.
Oct. 27. 100 U. S. Food Cert.....	3383
100 Pon. Creek, N. Y.....	689
100 A. R. Com.....	136416
300 Pa. Cert.....	100 A-850322
" "	100 A-528278
	50 A-408662
	35 A-221275
	12 A-430230
	2 A-651028
	1 A-454812
100 End. Johnson Cert.	M-322
50 Reynolds Tob. Class B. "	E-3199
100 R. Pfd. Cert.....	30670
200 X. 107 $\frac{5}{8}$	\$21,555
29. Cash	5,000
300 X. 109 $\frac{1}{8}$	32,782.50
200 X. 109 $\frac{1}{4}$	21,880
Nov. 1. 500 X. 110	55,075
5. Cash	5,000
10. 200 R. B. C. 120	24,030
5. 200 R. B. C. 133 $\frac{3}{4}$	26,690
11. 300 " 117 $\frac{7}{8}$	35,407.50
12. 500 X. 104 $\frac{5}{8}$	52,387.50
12. A. T. Cert.....	56630
100 D. & Riv. Gr. Pfd. Cert.	7643
20 "	010994
80 "	08880
100 Wheeling Lake E. C.	4204
100 Gr. "	2423W
100 Aic, N. Y.....	1386
824 " 400 Un. Pac.....	323943
	323942
	320417
	324016

\$279,907.50

(The following appears on right hand side of sheet:)

Date.		Credits.
	804	8,704.80
Oct. 28.	1,204	13,042.20
	100 R. B1	10,806
Nov. 12.	100 "	10,831
12.	1,000 X.	103,685
13.	100 R. Bl.	10,856
	100 R. Bl.	10,806
	100 "	10,831
	200 "	21,662
	500 X.	51,842.50
17.	100 A. I. C.	11,331
	100 "	11,356
	100 A. F.	13,501
	200 U. P.	25,802
	100 G. R.	8,106
		<hr/>
		\$323,162.50

Sheet 2.

Date.		Debits.
Nov. 15.	.....	\$279,907.50
	Cash	6,000

Q. Will you please state again, so that we get this straight, before we pass, just what Mr. Easterday said to you about Mr. Newman being able to help the firm out of its difficulties?

A. Mr. Easterday told me he had been in touch, over the telephone, with Mr. Newman and that Mr. Newman had told him that he thought he knew a man in New York here who would loan us some securities to tide us over, that we could arrange a loan on.

Q. Can you fix the date?

A. October 10th, 1919.

Q. Mr. Easterday is the man that really got the firm of Sullivan & Co. into the financial difficulties, is he not?

A. Yes.

Q. He speculated very heavily, did he not?

A. At times.

Q. And it was always with the clients' money and securities, was it not?

A. It was all mixed, you know.

Q. I mean, he was using clients' moneys and securities?

A. Oh yes.

Q. In these speculations?

A. Yes.

Q. And he was generally on the wrong side of the market?

A. Yes.

Q. He was generally selling short when he should have been long?

A. Yes; when the market was going up.

Q. Was not there one transaction where he was short of Rubber a couple of thousand shares?

A. No, he was not short that much; but he was short by about 900 or 1,000 shares.

Q. Now, under what different names did you know the so-called Nicky Arnstein?

A. Nick Arnold is the only name I knew.

Q. Nick Arnold?

A. Yes—I knew him first by Nick; afterwards I knew him by the name Arnold.

Q. You never knew him until the first meeting at the Hotel Bretton Hall on Saturday, October 11th, 1919?

A. No sir.

Q. You had not even heard of him?

A. I never did.

Q. Under what different names did you know the so-called Nick Cohen?

A. Under two names only; first as Nick, and then—about the same as Arnold. I first learned his first name, and afterwards he told me his last name was Cohen. I never really knew him under the name George Wall.

Q. You never knew Nick Cohen before Saturday, October 11th, 1919?

A. No.

Q. And had not even heard of him?

A. No.

Q. Did you ever know where Nick Arnold lived in New York?

A. I learned, yes. He took me up to his house on night.

Q. Referring to Nick Arnold now?

A. Yes.

Q. Was that at No. 1 West 83rd Street?

A. Yes sir.

Q. And there you met Nick Cohen also?

A. Yes sir; I think he was there that evening.

Q. Did you ever meet Nick Arnold's wife?

A. No.

Q. Did you ever meet a man by the name of Lew Brice?

A. No.

Q. Or Phil. Brice?

A. No.

Q. Or Rose Brice?

A. No.

Q. Did you ever meet any relatives of Nick Arnold or Nick Cohen?

A. No.

Q. Were you ever to Nick Cohen's home?

A. No. I do not know where he lives.

Q. You do not even know now where he lives?

A. No sir.

Q. Did you ever know anyone by the name of Borach?

A. No sir.

Q. Or Louis Bleet?

A. No sir.

Q. Philip K. Dalton?

A. No sir.

Q. Did you ever know anyone by the name of Dalton?

A. No.

Q. Or did you ever know anyone by the name of Dekker?

A. No.

Q. Or Derr?

A. No.

Q. Or Drucker?

A. No.

Q. Or David Eschner?

A. No sir.

Q. Did you ever meet any of Arnold's friends?

A. No.

Q. Or Cohen's friends?

A. He introduced me to one fellow one night.

827 Q. Who is he?

A. I could not tell you. I don't know that he told me his name.

Q. I mean who introduced you?

A. Cohen did.

Q. Where was this?

A. That was on Broadway somewhere. I don't know whether he did introduce me either. I believe he stepped aside and talked to a fellow, and he said to me "You may sometime find that fellow backward," or something of that kind, "Don't be worried," something of that kind.

Q. You never knew who he was?

A. No; I don't believe he did introduce me.

Q. Did you ever go anywhere with Arnold or Cohen, outside of the places you have told us about?

A. Up to this time you mean? I went out to the roadhouse with him.

Q. Where?

A. I don't know where it was. It is out in the suburbs here.

Q. Blossom Heath Inn?

A. Out in that neighborhood.

Q. When was this?

A. It must have been around the 7th or 8th of November 1919.

Q. Last year?

A. Yes; somewhere along in there.

Q. What was the occasion of that?

A. They said they wanted to see Bill, I remember. They hadn't seen him since the day down at the Red Lion Inn. I don't think I

had been feeding them money fast enough. I was constantly in a wrangle.

Q. Tell us all about that now, will you?

A. So they wanted to see Bill and talk to him. And they told me to meet them in this park opposite the Hotel Endicott, at a certain time and we went up there and walked through the park and fooled around for five or ten minutes. They were 828 always very prompt as a rule; they were within five or ten minutes. Usually I would get there on time, and it would be five or ten minutes, and they picked us up in a taxicab and we rode out slowly, out the Concourse I believe—I do not really know New York, and I could not say; I do not know the roads here. I have been over some of those roads out there. And we went to this roadhouse, and I think they succeeded in getting a drink or two there.

Q. Well, what was talked about?

A. Well, I don't remember just exactly what the occasion was, but I cannot conceive why the meeting took place, unless it was on account of the fact that we had been battling over finances. They would shove me. And that is the day they got off on various things in regard to Arnold telling me his eighteen months up in Sing Sing. And it is strange, but Easterday and Arnold were in the Tombs at the same time. Easterday said "I have seen you somewhere before, but I have studied and studied, and wondered where I met you before." and he said "When were you in the Tombs? Have you ever been in the Tombs?" Arnold said "Yes, I was in the Tombs." And then they got talking about it, and come to find out they were in the Tombs together. I don't know whether they were on the same tier or not. Easterday said he just remembers getting a flash of him—Easterday was only there for a few days, but it happened that Arnold was in there at the same time, and he remembered him. He is a man that you would remember, anyway.

Q. Well, have you told us all that took place on that occasion, as well as you remember?

A. Well, I remember I put up a howl; I wanted to quit; I didn't want to fool with it. And I remember Arnold saying "Don't quit now; now is the time to go."

829 Q. Tell us about that.

A. Well, I don't recall a great deal about it.

Q. That was the time you were in for over \$500,000, you just now testified?

A. That was just after the last Baltimore transaction.

Q. You were in for over \$40,000. Did you tell them that you were afraid of getting into trouble?

A. Well, I always told them that.

Q. You really did want to withdraw, didn't you?

A. Oh, from the start.

Q. And they kept urging you to stick?

A. Sure.

Q. Did they threaten you?

A. No, I cannot say that they threatened me.

Q. Didn't they tell you what would happen if you started to withdraw?

A. They used the other methods, con methods.

Q. Tell us about that.

A. That I was a damn fool if I did not take advantage of this opportunity that I might never get again in my life.

Q. What opportunity?

A. Well, here were stocks worth hundreds of thousands of dollars, and we had an organization that if the stocks were carefully handled and the loans were properly placed, it could be run up into the millions.

Q. Well, did they say how much they had gotten?

A. From that stock?

Q. How much stock they had gotten?

A. No; but they told me they could get all the stock they wanted.

Q. Did they say how much they had besides what they had given to you in stocks?

830 A. They never did say they had any stocks; they never did tell me that they had. They said "We can get."

Q. How much?

A. One million, two million, five million.

Q. Did they tell you how? Did they say they stood in with anyone on the inside?

A. No; on this particular occasion they did not; not on this ride, I don't know that they did. But Easterday was very insistent for them to tell him about how they got these stocks, and they would not tell him. They did tell him another story, the same as they told me, three or four different yarns about it; but they did not really clarify the situation at all. They told me on one occasion it was done by an inside man among sixty employees, and that one fellow would do the stealing, and he knew there was one chance in sixty of them getting caught. And another time he told me that a head messenger boy, or a boy who worked with the messengers, well known, well established messenger, knowing what was leaving a certain Stock Exchange house to go to certain other Stock Exchange houses, would, in some way, intercept, or be there to receive the stock. And I wanted to know "Well, was he working with that messenger boy?" And he would say "Yes." But on the face of it, it is ridiculous, don't you see? Why would he even go to the trouble to send the messenger boy out with that stuff? And why would he go to the trouble to go around to the Stock Exchange houses to meet the boy? I did not believe that. And then, by intimation he led me to believe that two fellows, one of them, a cashier, or assistant cashier, and another fellow in the same office, were working together and covering everything up on the books. And other one was in some way checking them off. And another time he led me to

831 believe that just before the stocks went into a big vault, he said "Don't you see that if, just after those stocks had been checked, that were going into the vault, and they never went into the vault, it would be three or six months or a year before they would be discovered to be missing; hard to tell when they would ever be

discovered." I asked him "Do you mean by that, that there were certain alterations made in the books that would cover those stocks being missing?" "Well" he said, "If they were clever enough to steal those stocks, don't you think they would be clever enough on the books?" That is the way he would answer. So I never was really able to figure out just how it was done.

Q. But all the time you were dealing with them, from the first time in Washington on October 14th 1919, right down to the last transaction, you believed that those stocks were stolen?

A. Oh yes.

Q. And you tried to find out how they were stealing them?

A. Yes sir.

Q. And you were never able to find out how much more they had stolen beyond those that they had given to you for handling?

A. No sir.

Q. Do you know where either one of them ever had any safe deposit box?

A. No.

Q. Or bank accounts?

A. No sir.

Q. Did you never discuss with them where they kept all their securities?

A. I did discuss with them, yes sir.

Q. Well, what did they say?

A. Well, they told me one or two stories about that too; conflicting stories.

Q. Just tell them to me; they may help us.

A. They told me that these stocks were—as the stocks were
832 stolen or gotten, whichever way you want to call it, they were immediately rushed out of the Wall Street district by another boy, or maybe the same boy, and they were put in what they called a "plant" they had, in a "plant" they had somewhere. And I remember he told me on one or two occasions, or one occasion, that when those stocks were taken from this "plant," they were moved from this "plant" to another place, and from that place to another place, to be sure that they were not being followed, and so forth. They moved them two or three places to see whether there would be any move in the direction of discovering them.

Q. What did they say about Street certificates; the feasibility of handling street certificates?

A. Well, they did not show much knowledge on that.

Q. Why did they want to deliver these certificates, these shares, to you in other cities, like for instance Washington, Boston, Philadelphia and Baltimore?

A. I do not know.

Q. Did they never say?

A. I questioned them about that too; but they never gave me a satisfactory answer. They gave me answers, but they were not satisfactory.

Q. Well, if you were called upon by the Federal Government to

aid in the discovery of assets, have you any knowledge or information at all which would lead to the discovery of any assets?

A. No knowledge.

Q. Well, have you any information?

A. No sir.

Q. Well, have you any suspicions as to where any other shares of stock may be hidden?

A. Only a belief or an intuition or something.

Q. Well, let us have that please?

A. Well, I have an idea that Toronto figures; and I have
833 an idea that Jersey figures.

Q. Now, what makes you say Toronto?

A. It seems to me that one of them told me that he had been in touch with somebody in Toronto, or something of that kind; that is the reason he had been so long in digging up stocks, or something of that kind. That dropped, or came out of a conversation. He had a hard time getting those stocks; or a certain party was up in Canada; later on maybe they were in Toronto. He mentioned, don't you see. It has come to me that Toronto has figured to a certain extent.

Q. Well, can you give us any names in Toronto?

A. No.

Q. Or any places?

A. I could not give you anything definite.

Q. Well, can you give us any more information about Toronto?

Let us have what is on your mind; it may help us.

A. Jersey and Toronto; there are two places I believe where there may be a chance that they figure.

Q. Well, under what names, would you suppose?

A. I would find out something about this brother of Furey's; but I have no reason for saying that.

Q. Do you know his first name?

A. No.

Q. How can you help us to find out? Suppose the Receiver in this case, or in the Arnstein case, wanted to go and hunt for these assets which have been stolen. Can you suggest how we would go about it?

A. How you should go about it? You see, there are two pairs of brothers mixed in this case: The Brunero brothers and then there is the Furey brothers. Now, in some conversation that I have been in, I heard, between the two, that something was said that it was his brother, or something about his brother, you see.

834 And then another time they told me that the boy that was doing the stealing down in Wall Street was a damn clever mean thief; the cleverest in the business.

Q. Did they ever mention the name of Zeitman?

A. No.

Q. Or Gus?

A. No.

Q. Or Herb?

No.

- Q. Or George?
- A. I don't think they ever mentioned his name to me at all.
- Q. Mack?
- A. They called him the "kid."
- Q. Did they ever mention the name of Gluck?
- A. No.
- Q. Did they ever mention Furey's name at all?
- A. No.
- Q. Do you know Furey?
- A. No.
- Q. Or Gluck?
- A. No.
- Q. Or any of these names I have mentioned?
- A. I think he figures.
- Q. One of these boys, Irving Gluck, says that he handed over a million dollars of securities to Arnstein. Did you know about that?
- A. No. He might not be accurate about that.
- Q. Did you ever hear the name Eddie Byrne?
- A. No.
- Q. Did you ever hear the name Jack Adler?
- A. No.
- Q. Did you ever hear of anyone by the name of Le Count?
- A. No—I may have met him. What does he look like?
- Q. Did you ever hear anything about Montreal?
- A. No.
- Q. Tell us about the count.
- A. I don't know if it is the same fellow. I remember meeting a fellow up near Washer's there one night; a man about fifty years old or fifty-five; a rather small man, rather extreme in his dress; light overcoat—very quiet though. Arnstein or Cohen told me—Arnstein told me that he was from England; had been in England all his life, and was a banker over there or something of that kind. That is about all I know. I never saw him but once; I did not take any stock in him; he did not look like a banker to me.
- Q. Did you ever meet anybody by the name of Ginsberg?
- A. No sir.
- Q. Did you ever hear of anybody by that name through any of these men?
- A. No.
- Q. Did you ever meet anyone by the name of Goldberg?
- A. No.
- Q. Or hear of him?
- A. No.
- Q. Or Graves?
- A. No.
- Q. G. G. Hynson?
- A. No.
- Q. Charles V. Hynson?
- A. No.

Q. Phil. Kastel?

A. I never met him until I met him in Fallon's office.

Q. Tell us about that.

A. Well, I went in there a few days after I was released.

Q. About when was that?

A. The 26th or 27th of December 1919. He told me that he knew that everything had been done that could be done to get me out. He said "Your nerves are all right."

Q. Kastel said that?

A. Yes.

Q. Did he tell you where he figures in this matter?

A. No. I talked to him afterwards, and I never saw anything that would lead me to believe that he ever figured in it at all. Oh, I know he did not figure in this. I imagine he is sorry that he did not, but he did not.

Q. Do you know what he was doing there in Fallon's office?

A. He was interested in this suit of his against Goldberg & Heim. And I talked once or twice after that, I was in there, and talked brokerage business. He told me he intended to go in business.

Q. Did he ever mention Strong's name?

A. No sir.

Q. Did you ever know what his relations were with Ed. Strong of Cleveland?

A. No. Fallon dropped something in Washington that was significant, though, in that respect.

Q. You mean W. J. Fallon, in Washington, two weeks ago last Sunday?

A. It was three weeks ago practically; it is either three or four weeks ago—I think it is three weeks ago.

Q. Did he come down to see you?

A. No.

Q. Who did he come down to see?

A. He came down to see some Major.

Q. What is his name?

A. I met him, but I do not recall.

Q. Griffith?

A. I think so.

Q. Do you know what Griffith has to do with this case?

A. No.

Q. Do you know what it has to do with Griffith?

A. No. I think Fallon and Sugarman were mixed up down there in some Government deal; I don't know what it was.

Q. Something crooked?

A. I don't think so. No, I think it was something legitimate.

Q. What was it?

A. I think they lost a lot of money too.

Q. What was it about?

A. Buying some Army automobiles I think.

Q. Were they trying to put something over on the Government?

A. I don't think so. I never got that impression from Sugarman or from Fallon either.

Q. Well, what did Fallon have to say to you on this occasion
837 in Washington two or three weeks ago?

A. I met him accidentally, although I knew he was in Washington, and tried to locate him; called up different hotels. First I called up New York, called up his office, and McGee told me he was in Washington; had been down there for a couple of days; that he had gone down there the day previous. And he told me he did not know where he was stopping, but if I would call up the Washington Hotel that I would find him there. And I did call up the Washington, the Willard, and the Raleigh, and I did not locate him. That was on Saturday; that was not on Sunday. I met him accidentally. I went to the National Theatre to see some show, and he walked into the theater just as I walked in. So I met him during the Intermission. And I called up Easterday, and Easterday came down for just a minute or two and talked to him.

Q. Well, you discussed your case, didn't you?

A. Yes.

Q. What did he say to you?

A. In a light way; we did not go into it. He made an engagement for the next morning.

Q. Then you went into it thoroughly the next day?

A. Not so very thoroughly.

Q. Well, how thoroughly? Now tell us what took place.

A. Bowls was there, and we met Wampler and Fallon and myself. And we really went into the bankruptcy end of this thing more than the criminal end of it. We did not discuss the criminal end of it.

Q. Tell us what took place; what was said. What did you talk about?

A. I did very little talking; it was a legal discussion between Wampler and Fallon and Bowls.

Q. What was it about?

838 A. Fallon advocated bankruptcy proceedings, in order to marshal these assets and to fight for these equities and the money that was in the banks.

Q. What do you mean? Fallon wanted to see whether he was going to get some money out of the equities?

A. Whether Sullivan and Co. was.

Q. Did Fallon say he wanted to get some moneys out of these equities?

A. No. Fallon has never shown that disposition; he has never been hungry for money. I have never seen any of that in him, anyway.

Q. Have you seen him since that meeting the day after the theatre meeting?

A. The day after that.

Q. Have you seen him since the Sunday that you saw him in Washington, about three weeks ago?

A. It seems to me—yes, I saw him. I was up one afternoon, I went in his office to see him, and he was trying that case up here in the Bronx, the murder case.

Q. How long ago was that?

A. A week ago—about ten days ago.

Q. What took place?

A. There was really not anything took place. I went up there and listened to him cross-examine two doctors; and I stayed there till 2 or 3 o'clock and I think I—

Q. (Interrupting:) Didn't you talk about your affairs?

A. No. He was up to his neck in that trial, and he had two lawyers with him, and that doctor. I really did not have a chance to talk to him. Of course I talked sociably, and I talked about the murder trial to him. But I don't think that my case was mentioned—oh, that was the day that I was called to court; they tried to force me to trial; and McGee went into court and succeeded in getting a two weeks' postponement on account of Fallon's being up here in this other trial, you know, this murder trial. That is when they set the trial for the 5th of April.

Q. Have you seen Fallon since then?

A. No, I don't think so.

Q. That is only ten days ago.

A. No, I have not seen him since.

Q. Have you heard from him since?

A. No, I have not.

Q. Have you seen McGee since?

A. No. I was just trying to think whether—it seems to me I talked to him over the 'phone about a week ago,—no, I did not, either; that was before.

Q. Have you told us everything that took place in Washington that Sunday?

A. That would be of interest to you I think.

Q. Well, tell us what would not be of interest, too.

A. I don't know. Some mention was made of Kastel—no, I don't think he mentioned the name. Some mention was made of Ginsberg, of Cleveland; said something about Ginsberg taking some bonds in there; and he was a broker, a member of the New York Stock Exchange, and he took those bonds in there.

Q. I do not get that at all.

A. Some mention was made of Ginsberg taking in some bonds that afterwards proved to be stolen, or something like that.

Q. Who is Ginsberg?

A. He is a broker.

Q. Where?

A. Out in Cleveland, isn't he?

Q. Do you know his first name?

A. No sir.

Q. Roughly?

A. I don't know that I had—that I am sure that he mentioned Ginsberg's name; but I remember afterwards something led me to give that it was Ginsberg.

Q. Well, tell us all about that now, will you?

A. Well, he said that one of his friends was on the verge
840 of handling those bonds, and he gave me a look and he said
"You know who I mean."

Q. Well, who did he mean?

A. I don't know.

Q. Well, he gave you a look.

A. Well, a look; of course, I concluded he meant Kastel. I had
no definite reason for saying that; but I just took that as a con-
clusion; I jumped at that conclusion. He said "I absolutely—I got
wind of it some way, and I told him for Christ's sake not to touch
them."

Q. Why?

A. That they were mixed up in that murder case.

Q. You mean the murder of the messenger boy?

A. Yes.

Q. Binkowitz?

A. Yes.

Q. Then what he said was that certain bonds of the value of about
\$50,000?

A. I don't know that he mentioned the amount. Mr. Dooling
mentioned it the other day. Maybe that is the reason I have it on
my mind, 50,000.

Q. Well, didn't he say that to you: \$50,000 worth of bonds were
stolen by this messenger boy, Binkowitz?

A. No.

Q. But he said there was a lot of \$50,000 of bonds of the lot which
had been stolen by Binkowitz?

A. He said just what I told you: that some fellow was on the
verge of mixing in, or touching those bonds; or was going to try to
handle it in some way—I don't know how. But he said "I told
him, for Christ's sake don't go near them; don't touch them."

Q. Do you mean because those were the bonds which had been
stolen by Binkowitz, and somebody had murdered Binkowitz; is
that right?

A. He said there was murder mixed up in it, and it was dangerous,
and absolutely told whoever this fellow was, not to touch them at
any price.

841 Q. Now have you told us all that Mr. Fallon told you in
Washington?

A. The whole conversation was more bordering along the civil
rights.

Q. What did he have to do with the civil rights?

A. Well, in a way, it dove-tails; the civil rights had to be fought
out in order to carry out the plan of action in the criminal end;
don't you think so, if you were attorney in the case? If you were
pleading innocence, you would certainly fight your civil rights as
well as your criminal rights, wouldn't you? You would have to
associate them.

Q. Well, Mr. Wampler was handling the civil side of it, wasn't
he?

A. Yes.
Q. And did Mr. Wampler agree with Mr. Fallon about his suggestion?

A. Well, it came about in this way: I had discussed the case, of course, with Fallon a few times, and he was in favor of bankruptcy proceedings, and he was not absolutely committed to it, but he was very much in favor of it. He said that was the only way he could figure that we could marshal these assets and get any kind of a settlement, or any kind of action, or any results. And I had considerable confidence in Fallon—at least, reports had come to me that he was a very good lawyer; and I went down there and I tried to make them show me where he was wrong. And while I was talking to Fallon, I tried to make him show me where they were wrong in Washington. I made them prove the case to me, don't you see? I would say to Wampler "Now why isn't it feasible? Now you tell me why." I wanted to see both sides of it. And I fought Fallon the same way; and he explained why he thought it was necessary, or advisable.

Q. Why did he think it was necessary?

842 A. Well, because I was innocent; that was assumed; that was the assumption, or presumption; and being innocent and having creditors, the only proper thing to do was to fight the thing out. And as an innocent man, I wanted what was coming to me and wanted the money out of the Bankers Trust Co., and wanted whatever rights, whatever moneys were coming to me, or us.

Q. You mean the equity?

A. The equity, or anything else that the law allowed me; everything that the law allowed me; to pay the creditors, and to abide by whatever decision the bankruptcy proceedings would bring forth.

Q. Was that after the bankruptcy proceedings were started against Arnstein?

A. Before. That was before Arnstein's name was mentioned.

Q. Then Fallon tried to show you how you could make a settlement with your creditors and still get some of the equities in these transactions from the banks?

A. Well, he said I had rights in those stocks.

Q. Did you discuss the amount of the possible equities?

A. No, I do not think so. We went through the amounts of the loans, and how much the equities were, and how much the loans were. I always found him pretty conservative; he did not show any undue motive to get the work; he had plenty of chances to go ahead and do it.

Q. Mr. Fallon does not know that you are testifying in this proceeding?

A. No.

Q. Did you ever hear the name J. C. Raibner?

A. No.

Q. Or John Rogers?

A. Oh yes.

Q. Tell him—us all about John Rogers?

A. I have seen him in Fallon's office.

Q. He is a contractor?

A. He is mixed up as a possible or probably indemnitor on
843 my bond, but they would not accept him, the Fidelity Co.

Q. Well, is he mixed up in any of these crooked deals?

A. I do not think so. He seems to have an estate that is tied up, or something of that kind.

Q. He is very close to Mr. Fallon isn't he?

A. I believe he is.

Q. And Mr. McGee?

A. Yes, I think so.

Q. And with Mr. Mulrooney?

A. I have seen him in there, but I have never talked to him.

Q. Irving Mulrooney; do you know what business he is in?

A. No, I do not.

Q. The liquor business?

A. I really do not know. I have heard him call him Mul. once or twice.

Q. What is that?

A. I have heard him say, "Come here Mul," or "How do you do, Mul," or something of that kind.

Q. Did you ever hear of the Opera Cafe?

A. No.

Q. Did you ever hear of John Bleeck?

A. Where is that?

Q. 40th Street & Seventh Avenue.

A. I have been in there.

Q. With Fallon?

A. No. I was in there with McGee, and Ranny Newman, and some boy that worked in his office there; an office boy that was in the crowd too.

Q. Whose office boy?

A. Fallon's. That was the night I was released on the 24th of December, 1919. When I was released we went up there, and Johnny Dyer was along.

Q. And you had a little celebration?

A. Well, we had a couple of drinks anyway.

Q. Did you ever know William Scherer?

A. No.

Q. Did you ever hear of his name?

A. No.

Q. Did you ever meet Ed. Strong?

A. No sir.

Q. Did you ever hear of him?

A. I am not sure that Fallon did not mention his name
844 in Washington there.

Q. In connection with the Ginsberg matter?

A. Some connection; I really don't recall.

Q. Well, didn't he tell you that Strong was Ginsberg's lawyer?

A. No; I did not know that he was a lawyer until to-night. I

had an idea he was a politician; I remember hearing that he was a politician.

Q. From Fallon?

A. I must have gotten it from Fallon, yes.

Q. Did you ever meet S. Charles Sugarman?

A. Yes sir.

Q. When?

A. I met him in Fallon's office; and I met him in the Tombs.

Q. Did you meet him frequently at Fallon's office?

A. I met him in there two or three times.

Q. What has Sugarman to do with Sullivan & Co.?

A. Nothing whatever.

Q. What has Sugarman to do with Arnstein and Cohen?

A. Not a thing that I know of.

Q. Did you ever talk with Sugarman about any financial matters?

A. No sir.

Q. Did you know that Sugarman was representing Fallon in some proceedings?

A. I did not. I thought Fallon was representing Sugarman in some matter. Is that what you mean?

Q. Both ways.

A. I thought possibly you had it backwards, or had made a mistake.

Q. No; both ways. Did you ever meet Mr. William H. Washer?

A. I think I did.

Q. With whom?

A. Arnstein.

Q. On more than one occasion?

A. Only one.

Q. When was that?

A. I can tell you maybe about when. About anywhere in between October 14th and November 10th 1919; around the 1st of the month we will say.

Q. What were the circumstances?

845 A. I think I met Arnstein in there one night; I had an engagement to meet him there one night.

Q. To hand him some money?

A. Not in there, I don't think I did. I am not sure that I did not meet one of them on the corner, and we went in there, and the other one joined us.

Q. Did you ever meet Herbert Weil?

A. No.

Q. Did you ever hear of him?

A. No sir.

Q. I. A. Zigman?

A. No sir.

Q. Did you ever at any time go to any safe deposit box, bank or trust company, with Arnstein or Cohen?

A. No sir.

Q. Or with anyone else, in connection with these matters?

A. No sir.

Q. Do you ever remember Arnstein or Cohen driving to Washington in an automobile?

A. No sir.

Q. Did you ever know whether they had an automobile?

A. I know that either Arnold or his wife had a Cadillac limousine.

Q. Did you ever ride in it?

A. Yes; I rode about two squares one night.

Q. With her, or just with him?

A. No; with just the two of them.

Q. Did you ever know that they had a Locomobile?

A. No sir. It broke down this night.

Q. No securities in it?

A. No. They picked me up on the corner, and I think it went about two blocks and something happened to it, and we got out.

Q. Now, these accounts opened on the books under the names of George Wall, Elmer E. Steele, and Charles Enright, were for the purpose of deceiving Drain and the other employees; is that right?

A. Yes; that is correct.

846 Q. You did not want them to know that you were engaged in any crooked transactions?

A. No sir.

Q. And they never did know, up to the time of the failure?

A. Yes sir.

Q. And Mr. Browder did not know?

A. Did not know. He may have suspected that there was something queer about those accounts—at least, he did not know from me. I do not know whether Easterday told him up there or not.

Q. Did Arnstein see you hand over any money to Cohen in Washington on October 14th 1919?

A. No.

Q. Did he tell you afterwards that he knew that Cohen got the money?

A. No.

Q. Did you afterwards tell Arnstein that you gave the money to Cohen?

A. I don't think so. There was never any question about it, but it was never discussed.

Q. What is the name of the man that was formerly with the Riggs National Bank, that you met?

A. He is still with them I think.

Q. What is his name?

A. Frank Rainey.

Q. Rainey introduced you to someone else?

A. No; he sent me to someone else.

Q. Whom did he send you to?

A. I cannot recall the name.

Q. Did he speak to that party on your behalf?

A. I do not know. He may have spoken favorably after the loan was made, but he was out; it was his lunch hour at that time.

Q. Well, did he tell you how to go through with that transaction?

A. He did not have to tell me. He told me who to see, and that

man referred me to Mr. Flathers, and Mr. Flathers had a short talk with Mr. Glover, and they made the loan.

847 Q. You do not know of any securities in the State of New Jersey at all, do you?

A. No.

Q. Neither Arnstein nor Cohen ever told you about any?

A. No sir.

Q. And you never saw them have any over there?

A. No sir. I always thought it was strange that they would not make a transfer of stocks to me in New Jersey.

Q. But they did, didn't they?

A. When?

Q. Well, you did meet them in Jersey?

A. I met them and talked to them, and paid the money. But the District of Columbia, Massachusetts, Pennsylvania and Maryland.

Q. They were not taking any chances with Jersey?

A. No. I do not know that they had any special reason.

Q. Where are these Iowa Central bonds; who has them?

A. Mr. Dooling.

Q. Don't they belong to the estate of Sullivan & Co.?

A. Well, Cohen had them among the Boston stuff.

Q. Then they really belong to the Arnstein estate; is that right?

A. And he asked me to keep them for him; he said he would get them from me some time.

Q. And you took them to New York?

A. Yes sir.

Q. And kept them in your safe deposit box?

A. Yes sir.

Q. And they were turned over by you to Mr. Dooling; or were they seized?

A. They were seized. I did not tell Mr. Dooling about them.

Q. Did he seize your safe deposit box too?

A. That is where they were.

Q. Three Iowa Central bonds, worth about how much?

A. No; there was only two; they were registered bonds.

Q. Were they stolen too?

A. I imagine so.

Q. How did you get them to be negotiable if they were registered?

848 A. They were not negotiable; they were in my box. I let Williams have one of them, and he borrowed \$1,000 on it, after putting a \$50 Liberty Bond with it. He afterwards told me, or he recently told me that he got somebody to take it out of the bank; the bank called the loan, and he was not able to take it up, so he got somebody to take it up.

Q. Did Williams know that it was a stolen bond?

A. No.

Q. Well then, Williams has lost his money?

A. Well, that is a legal question; I do not know.

Q. What is Williams' name?

A. W. D. William D.

Q. Is this a list of the stocks that were taken over? (Showing witness paper.)

A. In Baltimore.

Q. I mean the following is a list of the stocks which you received from Cohen and Arnstein in Baltimore; is that right, on or about November 8th 1919? (Handing witness paper.)

A. They appear to be, yes.

Q. And they were taken by the Police, or the District Attorney?

A. Well, I do not know that, but I guess so.

Q. Well, didn't you get a receipt? Where is the receipt?

A. Wampler has it.

Q. Are there any missing?

A. I do not know.

Q. Now tell me about the suggestion that you go to Chicago—was there any such suggestion?

A. Yes.

Q. Now tell us about that.

A. The suggestion was made to go to Chicago.

Q. Suggestion by whom?

A. Cohen.

Q. When?

A. Before the Philadelphia trip. I saw no sense in that, and I told him so. I told him I did not see any sense in going anywhere; and they insisted that they knew what they were doing.

849 Later on they said they would go to Philadelphia.

Q. When you met in Boston, you met in the Touraine Hotel, did you?

A. Yes sir.

Q. And in Philadelphia, in the Bellevue-Stratford Hotel?

A. Yes sir.

Q. And in Baltimore?

A. The Hotel Emerson I think it was; I may be wrong about that; I always get those hotels in Baltimore confused.

Q. As I understand you to say, when those securities were handed to you by Cohen in Washington, Arnstein was present?

A. No sir.

Q. He was not?

A. No sir.

Q. No one was present?

A. No sir.

Q. Was anyone present when they were handed to you in Boston?

A. No sir.

Q. Or in Philadelphia?

A. Yes sir.

Q. They were handed to you by Cohen in your room, in Arnstein's presence?

A. Yes, sir.

Q. What about Baltimore?

A. Nobody but Cohen, Cohen handed me the check.

Q. But afterwards, as I recall it, there were conversations and discussions, and there was no question about the fact that Arnstein knew that you had received them?

A. No question at all.

Q. Was there ever a receipt given at any time for any of these securities?

A. No sir.

Q. Or for any of the money that you gave to these men?

A. No sir.

Q. And all the transactions were in cash?

A. Yes sir.

Q. Although Arnstein was not present when you received the securities in Washington, he was in the City?

A. Yes.

Q. And the same thing in reference to Boston?

A. Yes sir.

850 Q. And Baltimore?

A. Yes sir.

Q. Did they tell you that they had received legal advice that it would not be well to handle any of these securities in New York?

A. No sir.

Q. Was that ever discussed?

A. Yes. I questioned them about it.

Q. And what did they say?

A. They never gave me a good reason, but they just refused to hand them to me here.

Q. Now, did Newman ever press you for money after you were introduced to them, Cohen and Arnold?

A. Yes; very shortly afterwards.

Q. And did he keep on pressing you?

A. He seemed to get into a great deal of trouble shortly after that.

Q. Did he ever threaten you?

A. Oh no.

Q. Did he ever threaten exposure if you did not give him money?

A. No.

Q. But he pressed you pretty hard, and you kept feeding him money?

A. He cried.

Q. The more he cried the more you have him?

A. He actually cried.

Q. And the more often he cried, the more often you gave him money?

A. Well, yes.

Q. What is this check: "October 14th 1919, Bankers Trust Co. No. 1004, Consolidated Clearing House, New York, \$258,595"?

(Indicating.)

A. That is a difference check, between losses and gains. Check No. 1012, \$4,000, October 15th 1919, drawn on Bankers Trust Co. to the order of the Empire Trust Co., was to pay the balance due the Empire Trust Co., which was an overdraft. (Indicating.)

Q. Please explain what this check is: "No. 1020, \$1,000, Paid to R. M. Newman, October 16th 1919, in the Bankers Trust Co." What that check for? (Indicating.)

851 A. That was for services, or else it was a loan to Mr. Newman.

Q. Well, have you any better recollection of it?

A. No.

Q. Was that for the introduction to Arnstein and Cohen?

A. Not to my knowledge.

Q. Well, did it have anything to do with that?

A. Not to my knowledge.

Q. What is this check: "No. 1014, on the Bankers Trust Co., under date of October 15th, for \$150, to the order of cash"? The stub says "expense;" what is that all about? (Indicating.)

A. I do not know.

Q. What do you say about these checks: No. 1025, 1026 and 1027, on the Bankers Trust Co., all drawn on October 16th 1919, to the order of cash, the first for \$50, the second for \$100, and the third for \$2,500? What do you say about those? (Indicating.)

A. I do not know anything about those.

Q. What is this check No. 1028, October 16th 1919, \$130, on the Bankers Trust Co.? (Indicating.)

A. I do not know.

Q. Check No. 1038, October 17th 1919, \$700, cash for salaries, what is that? (Indicating.)

A. That ought to be explained by Easterday.

Q. What is this check No. 1122, October 31st 1919, on the Bankers Trust Co., \$1,000? (Indicating.)

A. Loan to Mr. Newman.

Q. It says here "Attorney fees." (Indicating.)

A. Well, attorney fees or loan. Easterday will have to explain that.

Q. November 7th, 1919, check No. 209, on the Bankers Trust Co., attorney fees, \$1,000; who got that? (Indicating.)

852 A. Mr. Newman.

Q. November 8th 1919, check No. 2525, on the Bankers Trust Co., R. M. Newman, Attorney, \$500; what is that for? (Indicating.)

A. That is attorney fees, loan.

Q. November 10th 1919, check No. 2,547, on the Bankers Trust Co., R. M. Newman, Attorney, \$1,000"? (Indicating.)

A. The same.

DAVID W. SULLIVAN.

Signed and sworn to before me this 7 day of April, 1920.

ALEX GILCHRIST,
Special Commissioner.

Adjourned.

In the Matter of NICHOLAS ARNSTEIN.

New York, March 19th, 1920.

Present: Mr. Myers, representing the Receiver.

NORMAN S. BOWLES, called as a witness, testified as follows:

Examined by Mr. Myers:

Q. Mr. Bowles, what is your full name?

A. Norman S. Bowles.

Q. Where are you living now?

A. Washington, D. C.

Q. At what address?

A. 1101 Monroe Street.

Q. Are you married?

A. Yes sir.

Q. What is your wife's name?

A. My wife's name is Marian L. Bowles.

Q. What is your father's name?

A. William C. Bowles.

Q. Is your mother living?

A. Yes sir, I have a mother.

Q. Will you give us her name?

A. Signora L.

Q. Have you any brothers?

A. Yes sir.

Q. Will you let us have their names and addresses?

A. Edwin H. I do not know where he is. He is in California somewhere, San Francisco.

Q. Go right ahead. Have you any other brothers?

A. Benjamin A.

Q. Where does he live?

A. Washington, D. C.

Q. What is his address?

A. I cannot tell you his exact address; he lives in Washington, D. C.

Q. Well, that is not enough; we have got to know where he lives.

A. Well, I do not know. He is cashier of the Potomac Savings Bank, but I have not any idea of his home address. I have not seen or spoken to him in the last three or four months; I have not spoken to him within a year; so I cannot tell you what is his address. I have not seen him within a year. And the other brother

I have not seen within twelve years; so I could not very well tell you what his address is.

Q. You say your brother is connected where?

A. One of them is connected as cashier of the Potomac Savings Bank, Washington, D. C.

Q. Is your father in business?

A. Yes.

Q. Where?

A. The Government.

Q. What is his position?

A. I could not tell you. He is with the Government; he is with the War Department I think; War, State and Navy. He has temporary employment with the War Department; I have not any other knowledge.

Q. Where does your father live?

A. 1408 Newton Street, N. W., Washington, D. C.

Q. You are a member of the Bar of Washington, D. C.?

A. Yes sir.

Q. How long have you been a member of the Bar?

A. About eleven years.

Q. How old are you now?

A. 37.

Q. Have you always been practicing Law since you have been admitted?

A. No.

Q. Up to the time that you went with Sullivan & Company?

A. No.

Q. Well, what other businesses were you in?

A. I have been in the brokerage business; note brokerage business.

856 Q. Under what name?

A. Norman S. Bowles.

Q. What year?

A. 1908, '9, and '10.

Q. In Washington, D. C.?

A. Yes sir.

Q. Did you fail in that business?

A. No.

Q. What other businesses were you in?

A. Automobile business.

Q. Under what name?

A. Bowles Motor Sales Company.

Q. During what years?

A. 1910 and '12 I think.

Q. Any other businesses?

A. Not directly, no.

Q. Well, indirectly?

A. I sold real estate—that is, I have been connected with real estate offices.

Q. Well, which ones?

A. Mostly in the capacity of attorney; advising, principally.

Q. Then you were not connected with that business, if you were attorney?

A. Advisory, in the real estate business.

Q. Have you been connected with any other business of any kind?

A. Not directly.

Q. Well, indirectly?

A. Well, with Slye & Watson, Inc. They are now out of business, out of existence. I had an office with them, and I attended to their business, in connection with the law practice.

Q. During what year was that?

857 A. Oh, from 1914 probably up until 1918; the latter part of 1918.

Q. Have you been connected with any other businesses in any other way?

A. No sir.

Q. Have you ever failed in any business?

A. No, except this one.

Q. How did you come to be connected with the firm of Sullivan & Company?

A. I loaned Mr. Sullivan some money.

Q. When? When did you start?

A. When they first went into business—when he first went in.

Q. When was that?

A. Probably in March.

Q. 1919?

A. Yes sir.

Q. Please state the circumstances?

A. He was going in the brokerage business and he needed some money, and he borrowed, probably, up until May 1919, probably six or \$7,000; and after May 1919 I decided to come in, because, like a margin account, I was in so much and I had—and he wanted me to come in to help him conduct and operate and watch the business; and I came in in May 1919 I think it was.

Q. Was -his your own money that you loaned?

A. No; I borrowed most of it from my father.

Q. Well, did your father loan it to the firm, or did your father give it to you, and you loan it to the firm?

858 A. My father loaned some of it to me, and most of it he loaned to us and took out notes for it.

Q. I mean the first \$6,000, that was between March and May 1919, were those loans made by you to Sullivan?

A. Those loans were made by me.

Q. That was your own money?

A. Yes sir.

Q. Out of what account was that?

A. Out of my account in the Commercial National Bank.

Q. That account stood in your own name?

A. Yes sir.

Q. And you have that check book and pass book?

A. I have it now?

Q. Yes.

A. No; I never had a check or pass book; I never used it.

Q. You never had a check book?

A. I did not use a check book. Pass book.

Q. Well, where is the bank book, check book?

A. You mean the check stub book?

Q. Yes.

A. I always wrote just from pocket check books. I didn't have any particular reason. I always knew about what I had in the bank, and I just carried it in my memory, whatever I had from time to time. I used to borrow money from them. I suppose I borrowed as high as—most of that money I borrowed from the Commercial National Bank; borrowed it.

859 Q. Well then, up to about the 1st of May 1919, you had personally loaned about \$6,000 to Mr. Sullivan; is that right?

A. Yes, that is right.

Q. Then you went in and became his partner?

A. Yes sir.

Q. Under a written agreement, or oral agreement?

A. Oral agreement.

Q. What were the terms of the partnership?

A. The terms were that I would put up what money was necessary from time to time, or borrow it for the firm, and we would repay the money that was borrowed before any profits would be divided, if any were ever made.

Q. On what basis were the profits to be divided?

A. Fifty-fifty. Sullivan and I have been friends for ten or twelve years, and our word was good with each other; we did not have any more than just a mere verbal statement of the conditions, which we both understood.

Q. How much capital did you put into the firm?

A. First I loaned them six or \$7,000—

Q. (Interrupting.) No; how much capital?

A. That was all I put in up to that time.

Q. Up to what time?

A. May 1919.

860 Q. Well, I am talking about capital. What was your contribution of capital to this firm?

A. The other I borrowed for the firm from my father.

Q. Did you make any contribution of capital to this partnership firm?

A. Six or \$7,000.

Q. How much?

A. Six or \$7,000; that was up to May 1919.

Q. Do you mean to say that in May 1919, instead of being paid by Sullivan you put that money back as your contribution of capital?

A. No; I could not get it out; I let it stay in there.

Q. Was that the whole capital that you contributed?

A. That was about all I personally contributed, yes—I do not know how Sullivan understood it; but I borrowed the rest of the money from my father, on his real estate; sold the real estate and got money and put it in there.

Q. How much was that?

A. Probably forty, forty one, or \$42,000, all told.

Q. Well, were those loans to the firm, or were they contributions of capital?

A. Loans to the firm.

Q. Where does that appear on the books of the firm?

A. No; we gave notes of the firm. I remember we gave him one note of \$20,000, when we borrowed, for instance on the 10th or 11th of October 1919, when the firm needed some money, we got 861 McNeil to loan us some money on my father's property; and he gave us the money.

Q. Where?

A. An apartment house.

Q. Where?

A. What do you mean, "where"?

Q. What street?

A. An apartment house, I think it was 1723 3rd Street, N. W. He borrowed \$15,000 from McNeil & Sheetz on it, and got a total of about \$20,000 for it, and we gave our note of \$20,000, the firm, we gave our note—I do not know whether we signed it "Sullivan & Company" or "Sullivan & Bowles"; \$20,000. I remember that note.

Q. That was a note given to your father of \$20,000?

A. Yes sir.

Q. And that was given on or about October 10th 1919?

A. On or about October 10th or 11th; I don't know just what date; at the time we needed that money; that was the money that we sent up here for the Exchange.

Q. Had your father loaned you any money before that time for this business?

A. Oh yes.

Q. How much?

A. He has loaned me probably \$20,000 besides that; 20 or 21,000; maybe \$22,000.

Q. Was that loaned to you? Was it given to you to put into the firm as capital, or was it loaned to the firm?

A. He loaned it to Sullivan and me.

862 Q. Does that appear on the books anywhere? Is there any loan account of your father on the books?

A. No sir. I borrowed some money from Sheetz—we did not carry that on the books, because we always—I will tell you why we did that: We always intended to return the money and pay it back. In the brokerage business you have an idea—we were impressed with the idea that probably in a few months or a few weeks we would be able to pay it all, or a portion of it, back; so we would just borrow the money, intending to pay it back out of the first real money we got.

Q. And you had agreed to contribute this as capital, had you not?

A. No sir, I did not.

Q. Was not that your agreement with Mr. Sullivan?

A. No sir, it was not.

Q. Then you were to get a half interest in this business simply for that \$6,000 which you had put up?

A. That was more than Sullivan put up to start with.

Q. Well, Sullivan put up about \$3,000, didn't he?

A. I think so; between two and \$3,000. I do not remember just what he put up.

Q. But he had been in business for some time before he met you, had he not; two or three months before?

A. Before I went in? He went in in March, 1919, as I recall.

863 Q. He went in about March 1919, and you came in in May 1919?

A. I think May is right.

Q. So he had an investment of more than \$6,000 when you came along, did he not?

A. He needed more money at that time, and that is why I came in, was because he needed money.

Q. So that you got your half interest for the \$6,000 which you had previously loaned to Mr. Sullivan?

A. That is right. But that \$3,000 that Sullivan put up—two or \$3,000, I don't know just what he put up—with the \$6,000 that I put up, that was before, from March on; because I loaned that from time to time, from March on; up to May. So that that was the capital in the business, the real capital that it was started with.

Q. You say that any moneys which were received from your father were received by the firm of Sullivan & Company as a loan from your father?

A. Yes sir, surely.

Q. And aggregated, up to the time of the failure, about \$40,000?

A. I think about 40—between 41 and \$42,000. That was besides the six or \$7,000 I put up.

Q. And your father had a note of \$20,000?

A. Now, I think the firm gave him a note of \$20,000—I am pretty sure at the time that we made the loan my father was sick,
864 and I sent Robert H. McNeil up to make the deal with him; and he made the deal. But whether he gave him a note—we took the property in, \$10,000 then, and borrowed \$5,000 on it later. Now whether he got a note just at that time, or got it later, I don't know.

Q. Did he have more than one note?

A. So far as I know, he only got the note of \$20,000 on that particular deal. Because he had gotten sore about loaning us money without notes, and he wanted a note.

Q. Then he has a note for \$20,000, and open indebtedness for about 21 or \$22,000?

A. I think that is right; money loaned.

Q. Did you keep a set of books in Washington?

A. They kept a set of books—I was not the bookkeeper. They kept a set of books in Washington, or these books, up to the time they came to New York. And after they came to New York they did not keep any books in Washington.

Q. Well, where are the books that were opened in Washington?

A. These are the books. (Indicating books.)

Q. The same books?

A. Yes sir. Here is May 26th 1919 right here, the first entry in this book. (Indicating.)

Q. Weren't there entries in March 1919?

A. What?

Q. Weren't the entries started in March 1919?

A. Well, I just happened to see this one, May. There may be some here; I guess it went back—

Q. All right; let us pass that. Who was the bookkeeper in Washington?

A. A little boy named Jacobs was our first bookkeeper.

Q. What is his first name?

A. Danny Jacobs I think.

Q. In Washington?

A. Yes sir.

Q. Well, he did not live in Washington, did he?

A. Yes; he was brought down there temporarily.

Q. By whom?

A. By Sullivan. He lives here; his home is in New York, but he was brought to Washington and left in Washington while we were doing business there, and before we came to New York he was living in Washington.

Q. How old is he?

A. Probably 28 or 29.

Q. How did you come to get him?

A. Easterday employed him.

Q. Was Mr. Easterday connected with Sullivan & Company from the very beginning?

A. Yes sir.

Q. That is, from March 1919?

A. Connected. He was manager.

Q. Neither you nor Mr. Sullivan had had much experience in the brokerage business?

A. None.

Q. And Mr. Easterday was a great friend of Mr. Sullivan? He was a friend of both of us.

Q. Mr. Easterday was placed in general charge of the Washington business?

A. Well, I cannot say that he had general charge. He was manager; brokerage manager.

Q. He had known Jacobs from New York?

A. Yes.

Q. And he brought Jacobs on to Washington?

A. Yes.

Q. And Jacobs ran the books in Washington?

A. Yes sir.

Q. Were there any other employees in Washington?

A. Oh yes; Mike Drain was manager of the office. And we had numerous other employees; I cannot just tell you the names of them at the time, in March and April and May 1919; I don't know just the names at that particular time; but I can give you a list of the names of the employees that appeared from time to time.

Q. Well, how many were there about, all together?

A. There were about, at one time there were probably, including Mr. Easterday, probably about six in the office at one time. And during the existence of Sullivan & Company, I suppose we employed about thirty or thirty five people, all told.

Q. In Washington?

A. No. I guess we probably did not have down there over fifteen.

Q. Well, is there any record in any book of the Washington employees?

A. No sir.

867 Q. You say all the Washington books were ultimately taken to New York?

A. Yes sir.

Q. How were the books kept in Washington, after you opened in New York?

A. Well, we were practically in New York, by wire; a telegraph instrument right here; if you wanted to charge \$5 to account No. 100, you just ticked the wire, and they got it in New York. And every night we sent confirmations of all the day's business to New York. It was first sent over the wire, and secondly, sent in by confirmations that night.

Q. When was the New York office opened?

A. Sometime in August 1919.

Q. About what time in August 1919 did you open the New York office?

A. I guess it was around about the 6th of August.

Q. And how long did the New York office continue? When were you dispossessed?

A. It continued in New York, doing business, up until the 16th day or 19th day of November 1919; and we were in possession of the office, and paying rent, till the middle or latter part of January 1920.

Q. State all the banks with whom you did business in Washington at any time? That is, the firm of Sullivan & Company.

868 A. The District National; Citizens Savings; Metropolitan National; Riggs National; Continental Trust Co. Those were the banks in which we kept accounts from time to time.

Q. Those were the five institutions: District National, Citizens Savings, Metropolitan National, Riggs National, and Continental Trust Co.; is that right?

A. Yes sir.

Q. With what banks did you do business in New York?

A. The Bankers Trust Co., and the Empire Trust Co. Those are the only ones I have personal knowledge of. Of course I know from hearsay where they kept other bank accounts. But those are the only ones I have personal knowledge of. I opened those two accounts.

Q. When you say hearsay, you mean you heard it from your partner Mr. Sullivan?

A. Yes sir.

Q. What other bank accounts did you have that you heard from Mr. Sullivan?

A. Seaboard National.

Q. Any others?

A. That is all.

Q. With what brokerage houses did you do business?

A. First we did business with Herbert T. Greenwood. And then we did business, when we were on the Floor, with practically every Consolidated house in New York. There was not any preference shown who we bought stocks from or who we sold stocks to. We did business with Secor, Weil; and we took over accounts from time to time, and transferred accounts from time to time, to every Consolidated house, and to New York Stock Exchange houses. I could not tell you the names of them; you would have to look all through the books to find them out.

Q. Did Mr. Easterday put in any money?

A. No sir, he did not put in any.

Q. Were there any other partners in Washington?

A. No sir.

Q. O' New York?

A. No actual partners. I believe that before I came in Mr. Sullivan had, or used the name of Longley. I do not think—and he always informed me—that Mr. Longley never—that Longley had nothing to do with it; that he was not interested in the profits or losses, but just loaned his name so as to give the "Company" to Sullivan.

Q. Now, did everything run along smoothly in Washington up to the time you opened the office in New York?

A. Smoothly; the average brokerage business for a house conducted in the way that we were conducting it.

Q. And you had cleared your Washington business through Mr. Greenwood in New York?

A. Through Herbert T. Greenwood in New York.

Q. For how long did that continue?

A. From May 1919 up until September; and from September, about the 27th I think—I don't think we did business with him after that, except as a member of the Consolidated Stock Exchange. Of course we would buy and sell stock from or to Greenwood, on the Floor.

Q. When did you become a member of the Consolidated Stock Exchange?

A. About two weeks after the 6th, which would be probably the 14th or 15th of August 1919. Some time between the 6th and 16th.

Q. Did that continue uninterruptedly?

A. Continued uninterruptedly until about the first or second week in October 1919; and then we had some trouble down there about being suspended, and Mr. Easterday did not have power to draw certain checks, and I was in Washington, and he got in some financial difficulties resulting from having had the wires and tickers taken out—the wires taken out of Greenwood's office, and the tickers

taken out of ours, which caused a run on the office, and a considerable amount of money paid out, which left the company very close to the margin. It was then that I borrowed the—between that time and the time I was reinstated on the Exchange, that I borrowed that \$20,000 from my father.

871 Q. Did you ever meet Nicholas Arnstein?

A. No sir.

Q. Did you ever meet Nick Cohen?

A. No sir.

Q. Did you ever see them?

A. No sir.

Q. Did you ever have any communication with them of any kind?

A. No sir.

Q. When did you first hear about them?

A. That is a broad question; I would like to—the first time I ever heard the names?

Q. Yes; or the individuals.

A. Well, I heard of the account of George Wall on the 15th day of October 1919; but I never heard of the names of Cohen or Arnstein until after Sullivan had been arrested.

Q. And that was in November 1919?

A. Yes sir.

Q. On or about October 15th 1919—

A. (Interrupting:) I do not know that I heard their names mentioned until after Sullivan had been released.

Q. When was that?

A. The latter part of December 1919.

Q. You never heard the name of Arnstein or Cohen up to that time?

A. Never heard it.

Q. What did you hear about George Wall?

A. To be frank with you, I never heard Arnstein's name until I saw it in the paper.

872 Q. Well, did you hear of him as Arnold?

A. I heard of Arnold.

Q. When did you first hear of Arnold?

A. After Sullivan had been released, he said something to me about Arnold.

Q. He told you that Arnold was Wall?

A. No; he told me that Cohen was Wall.

Q. When did you first hear about the George Wall account; October 15th?

A. October 15th 1919—no; October 14th.

Q. What were the circumstances?

A. I was in New York on October 14th 1919; I came here on a summons before the Consolidated Stock Exchange; and I came up the night of the 13th of October; left Washington at midnight, and got in New York about nine o'clock, or half past eight I guess it was; I got up to the office around nine o'clock, or ten o'clock, whichever it was; and nothing particular around the office; everything seemed to be smooth, running easy; I did not notice any particular

thing that needed my attention. And I went down before the Exchange at about four o'clock. I was before the Exchange for probably an hour; and after that I came back to the office, and I was called on the telephone by my Washington manager, Mr.

Drain—at least, he called on the phone and I happened to
873 answer it, Long Distance. And he told me he had taken in a big account there, \$40,000, and wanted me to pay him \$2,000 commission. That was the first knowledge I had that there was such an account, or that there was an account opened of any unusual size. And I told him I would inquire into it when I came to Washington, which would be the next day. And I went back to Washington at midnight on the 14th of October, and was at the office at ten o'clock the next morning. I saw Drain there, and he explained and told me about that Wall account. He said a man came in and opened an account with him; had put up \$40,000 worth of stock; and he enumerated the stock.

Q. Well, didn't you have any knowledge that that was an irregular account?

A. Not at that time.

Q. Well, when?

A. About October 10th 1919, when we were arranging the loan with McNeil, Easterday had been in telephonic communication, so he told me, with someone in New York, who told him that he would loan him sufficient stock to pay up his indebtedness on the Exchange, and straighten himself out. And I had no faith in that statement at all, and I did not pay any further attention to it. But Easterday and Sullivan were in New York, left there on the night of the 10th of October I think, and were in New York from that time on until the night of the 13th of October. I am in-

874 formed that Sullivan left here on the night of the 13th of October 1919. He was not here when I came in on the morning of the 14th. They said nothing to me until after the account had been opened, about it being the account; but after it was opened, on the 15th of October 1919, when I saw Sullivan, he told me that that was the stock that Easterday had loaned him, or that someone had loaned to Easterday, but he did not tell me who it was. And so far as I knew at that time, George Wall was the name of the account. I did not know who George Wall was, and did not know at that time that it was a fictitious, or made up name; at that time I did not know it.

Q. Well, you knew that Easterday and Sullivan were going to New York about the 10th of October 1919, didn't you?

A. Yes sir.

Q. And you knew what they were going for, didn't you?

A. They were going to put up the shortage on the Consolidated Stock Exchange.

Q. Well, didn't you know that Mr. Newman had telephoned to Easterday about the matter?

A. I knew that Easterday told me, and said that he had talked with Newman on the telephone, and that Newman had somebody

that would lend him 100 to \$130,000 worth of stock. I knew that.

875 Q. And you knew then that it was irregular, didn't you?

A. I did not think—I did not believe it was possible.

Q. You did not think it was possible?

A. I did not think anybody could do it. I did not have the slightest idea that they were going to do it.

Q. You supposed that if anybody would do it, there would be something irregular about it?

A. Well, at first Easterday led me to believe that he had some powerful financial friends in New York who were going to honestly loan him stock; and I thought it was a huge joke; because I did not think that anybody was going to loan Easterday stock to get him out of any such difficulties; because he must realize that our financial condition was not too strong. But I thought maybe that Easterday had represented that I had some finances, or made some financial representations, and had given him some big bonus. But on the 15th of October, after the second amount of stock had been put up, I realized that something must be wrong with that account. I did not think it was a good account, after the second lot of stock was put up. But up to that time I did not have any knowledge of it, other than what I have just told you.

Q. Well, you knew that Easterday was a man with a very bad record, did you not?

A. I knew he did not stand very well in the New York
876 financial districts.

Q. Well, you knew he had failed, in bankruptcy?

A. I knew he had.

Q. As a stock broker?

A. Yes.

Q. And you knew he had been indicted on more than one occasion?

A. Yes sir.

Q. And had been convicted?

A. No; he has not been convicted.

Q. He had never been convicted?

A. To my best personal knowledge, Easterday has never been convicted of anything.

Q. Then up to October 15th 1919 you had no knowledge or notice or information of any kind, that these transactions which afterward turned out to be Arnstein and Cohen transactions, were irregular?

A. No sir.

Q. But on October 15th 1919 you did have some information on the subject?

A. After I handled the stock on October 15th I began to think it over, and I thought it was a pretty big loan, or a pretty big account for Easterday to get from some friends of his, whom he had not spoken of prior to that time. And after thinking it over, giving it serious thought, just as any other business man would, I realized that it did not look too good; that was all.

Q. When did Easterday first tell you the name of the New York party to whom he was telephoning?

A. Mr. Myers, I do not know that Easterday ever told me—oh, who he was talking to?

Q. Yes?

A. He told me that day it was Randolph Newman, the day he talked.

Q. And Newman had been the New York attorney for Sullivan & Company?

A. He had done some business for Easterday, and partly—and some business for Sullivan & Company, yes.

Q. But he was not the regular attorney of Sullivan & Company in New York?

A. Sullivan & Company at that time did not need any attorney. We had not had any business that called for an attorney, outside of myself being attorney, and Mr. Wampler in Washington, a friend and attorney of mine. And we did not necessarily need, nor I do not believe had, any New York attorney; except some little matter that might come up.

Q. Now, state exactly, to the best of your recollection, what Mr. Easterday reported to you as a result of his telephone talk with Mr. Newman on or about October 10th last year?

A. He said "Go and close that deal up with McNeil; and I just had a conversation with Randolph Newman and he said he has a fellow in New York who will loan us 100 to \$130,000 worth of stock, and we can borrow sufficient on it to get us out of the hole, and use the money until we are able to repay it." That is about what he told me, or words to that effect. Sullivan also had very little faith in that at that time.

Q. Did you and Sullivan talk it over?

A. Right there with Easterday we talked it over and we both made light of it; because Easterday had made big promises prior to that of what he was going to do this way and that way and the other way, and what he knew about that stock business, and what friends he had here, and friends he had there. I did not have any faith in it. And Sullivan had absolutely no faith in him; that I know. And I know I had none.

Q. How soon after that telephone talk did Sullivan and Easterday leave for New York?

A. They left for New York immediately after I arranged the loan with McNeil.

Q. And how much was that loan?

A. \$10,000.

Q. And that was on your father's real property?

A. Yes sir.

Q. Yes?

A. And on the night of the 13th of October 1919, I brought up an additional \$6,000 that I got on that same property, first and second trusts; the additional \$5,000—I held back \$1,000; I did not give Sullivan quite all the 10,000 when he came up there. That

879 makes the first one somewhere in the neighborhood of \$9,000, and the second one about \$6,000. And then I opened an account with the Bankers' Trust Co. when I arrived in New York on the 14th of October; and I believe the first entry in that account was about \$5,800; I may have paid a couple of hundred out somewhere; I believe I had 5,800 and something. (After referring to book.) \$5,854.16.

Q. Now, Sullivan and Easterday went to New York to meet Mr. Newman and this other party?

A. They went to New York to meet Mr. Newman—they went to New York to pay that check on the Consolidated Exchange, and square us with the Consolidated. And Easterday was going to inquire into the merits of the deal that Randolph Newman spoke to him about on the telephone.

Q. Now, did Sullivan and Easterday meet Newman in New York at that time?

A. Mr. Myers, that was testified to by Sullivan. I do not know. I know from hearsay that they did, but I do not know it myself.

Q. From whom did you hear it, and when?

A. I heard Easterday testify to it down in Washington.

Q. Never mind the testimony. Where did you hear it at that time I mean?

A. At what time?

Q. Around or about the 10th or 15th of October 1919.

A. I did not hear it.

Q. Well, didn't Sullivan and Easterday tell you?

880 A. No sir.

Q. Whether they had met Newman in New York?

A. They did not tell me until the 15th.

Q. Yes. Well, on the 15th they told you?

A. Sullivan told me.

Q. What did he say?

A. He said "We saw Ranny and fixed that deal up—saw Randolph and fixed that deal up."

Q. Is that all he said?

A. Well, he was very reticent, and would not tell me anything about it—did not tell me anything about it.

Q. Did not you ask him what deal he meant?

A. Yes, I asked him what he did and he told me that they borrowed all the stock that was opened in that account, and all that was obtained in the second account—the second day, which was a total of nearly \$100,000.

Q. Well, did he say where he borrowed it?

A. He said he borrowed it from a man Randolph Newman had introduced him to.

Q. Didn't he say the name?

A. No sir.

Q. You thought that was very mysterious, didn't you?

A. I thought it was George Wall. He never told me any different name.

Q. You thought it was very strange, didn't you, the whole thing?

A. After I began to think it over, yes, I did begin to think it strange.

Q. And you concluded, on or about the 15th of October last, that this whole transaction was improper?

A. Yes sir.

Q. Did you suppose that the securities were stolen?

A. No.

Q. Well, what did you suppose?

A. Well now, I cannot tell—I began to get leary of it; and Sullivan and I talked it over, and we both of us—Sullivan himself said “I want to get out of this business. I don't want to stick to this business.”

Q. What is that?

A. I talked with Sullivan about it, and he said he was about through with it; that he did not want any more of the brokerage business. And he said if he could just get out square, that he would get out. And I said “If I could only protect the amount of money that I have put in here, from my father, and the rest of the people, one or two particular friends”—the rest of them were not particular friends of mine; the customers were customers who had been secured through Drain and other employees, and Jacobs; they were not particular friends of mine. I said “If I could square my father and one or two particular friends there, I would like to get out of the business myself, and I would take a loss.” But we were in so deep then that neither of us could get out.

Q. Well, was this after you had gotten the \$100,000 worth of stock, or before?

A. After we got that.

Q. Well, just before you got it the concern was in failing circumstances?

A. Yes sir.

Q. And it looked like bankruptcy?

A. Yes sir. And I stated on the 10th of October 1919, when Easterday and Sullivan came there, that I was through; that I would not borrow another dime from anybody; I was going into bankruptcy and quit. Sullivan said he did not blame me, and that was the right thing, and he left the office and I don't know where he went; but somebody called me up and told me that McNeil would make a deal with me and loan me some money. So I went over and talked with him. And while I was over talking with him about that deal, this telephone conversation was had with Newman. When I came back, Sullivan had come in in the meanwhile, and the conversation had been related to him. He did not take any stock in it, but he figured that I would have to pay out those debts anyway, of Sullivan & Company, and I might as well borrow the money and pay up the Consolidated, and clear ourselves, and bring ourselves as near the closing point as possible. We had practically decided to quit. We did not owe very much money at the time, to the stock creditors.

Q. Now, the Mr. Greenwood about whom you have testified, is Herbert T. Greenwood?

A. Yes.

Q. And he was then located at 50 Broad Street, New York?

A. No. He was located at 7 Wall Street. When we first opened the account his office was 50 Broad Street; but he later moved to 7 Wall Street.

Q. What were the relation with Greenwood?

A. Correspondent.

Q. What did he do for you?

A. Bought and sold stock.

Q. That is before you became members of the Consolidated Stock Exchange?

A. He bought stock on the Floor and sold it to us over the wire. We had our own wire in his office.

Q. Was Mr. Easterday on a salary in Washington?

A. Yes sir.

Q. How much?

A. I would have to look at the books for that because his salary fluctuated right along, from time to time. He was always increasing his own salary, without permission. I think he started in at \$50, but he increased himself right along. I don't know just what he increased himself to.

884 Q. Well, did he have authority to increase it?

A. No; he took it without authority.

Q. Well then, if he drew more than \$50 a week, he was not entitled to it?

A. Well, he would tell Sullivan and myself that he was going to—that he had to have more; and he showed us where his living expenses cost him more, and I believe we consented to advance him from time to time, after he had advanced himself, and ratified it; until I believe that he was drawing a considerable salary, towards the end. I don't know just what it was. \$100 a week was the highest authorized salary that I ever knew him to get.

Q. The highest you had ever authorized?

A. Yes sir.

Q. And the highest you had ever ratified?

A. Yes sir, I personally.

Q. Or Mr. Sullivan?

A. I don't know anything about his drawing any more. I was in Washington all the time from October 1919.

Q. When were you at the New York office? Please state what times you were at the New York office, from the time it opened?

A. I was at the New York office exclusively up to and including the early days of October 1919 from August 1919.

Q. From the beginning of August to the beginning of
885 October 1919?

A. From early in August to early in October 1919.

Q. And after that you stayed in the Washington office?

A. After that I was in the Washington office.

Q. Where did you live while you were here?

A. Well, I stayed at Easterday's house.

Q. Where was that?

A. On Riverside Drive.

Q. What is the number?

A. 264.

Q. All the time?

A. Yes sir.

Q. Was your wife there with you?

A. No sir.

Q. Was Easterday's wife there?

A. Easterday was not in New York with me. He stayed in Washington up to the latter part of September 1919, as I recall. He came out—he probably may have been there two weeks, but he was not here any longer than that, while I was in New York.

Q. Who else was there while you were there, at Easterday's house?

A. Nobody but his family.

Q. Well, who constituted his family?

A. His mother and father, and his wife; she was there part of the time. That is all—there may have been a visitor or two, but I do not recall; none permanent.

Q. When you first came to New York where did you open the office of Sullivan & Company?

A. Room 1516, in that suite, 20 Broad Street.

886 Q. Who was there?

A. I was there, and three or four employees.

Q. Well, whose suite was that?

A. A suite we sub-leased from Randolph Newman.

Q. Had you known Mr. Newman before that time?

A. I had seen him before that time in connection with matters of Mr. Easterday's, he having appeared as attorney for Easterday in some matters.

Q. New York, or Washington?

A. He appeared for him in New York.

Q. In what matters were they?

A. The State against Easterday.

Q. That was when; in August 1919?

A. That case was originally brought in February.

Q. February 1919?

A. 1919, and it dragged on, numerous appearances having been made, and probably some motions made, and things of that kind; I personally appeared first in the case; and finally, Hartman & Levy appeared in it—or Stanchfield & Levy; Mr. Hartman appeared for that firm in the late Summer, or Fall of 1919.

Q. Well, were you Mr. Easterday's attorney?

A. Yes sir.

Q. For how long before the firm of Sullivan & Company was formed?

A. Five or six years.

887 Q. Well then, you must have known of his criminal record.

A. He had no criminal record.

Q. Well, had not he been indicted on quite a few different occasions?

A. He had been indicted in Washington for running an alleged bucket shop; and he had struck a man on the road between Baltimore and Washington, driving his automobile, and was indicted over there for manslaughter; and he was indicted in New York for kiting a check from the Chatham & Phenix National Bank to the Greenwich Bank. I know those things.

Q. Well, had he never been brought to trial on any of those matters?

A. The indictment in Baltimore was dismissed, I think on motion of the District Attorney, representing him, without appearance of counsel at that time. I was succeeded as counsel in that case. And the matter in Washington has been pending; there is three or four in it; it is pending, dragging along from time to time, and there has nothing been done in it, practically speaking. And the matter in New York was finally nolle prossed in open Court, I think on motion of the District Attorney.

Q. Well, had it been adjusted civilly by Easterday?

A. Yes; Easterday made good the check.

Q. How much was that?

888 A. I think he was indicted on a 200 dollar check.

Q. Well, how much was involved in the transaction?

A. But there was some \$1,492 involved, as I recall it, in the whole transaction.

Q. Were those the only crimes, or alleged crimes that you know about of Easterday's?

A. I do not know of any other. I have heard of a lot of small things, ill-mannered things. I don't think he was ever indicted on anything, or ever accused in Court of anything; but just these little things; they say he may have done this and that and the other thing; but nothing that I can recall.

Q. But you know that he made a practice, before you met him, of giving bad checks, didn't you?

A. Mr. Myers, I would not say that.

Q. No?

A. Not as a fact, no. That is the only check transaction—oh yes; when he was in bankruptcy in Baltimore it seems he gave a check in Baltimore on the 16th day of November, as I recall now, to pay a bill that he owed there; and he left Baltimore, and before the check got to New York he was sued in bankruptcy, and payment of the check stopped; and the Authorities in Baltimore, it being payment of a hotel bill, they took some action on it; but that matter was adjusted.

889 Q. Adjusted by paying, you mean?

A. Yes; adjusted by paying.

Q. Then you knew Mr. Newman very well just before you took a room of his suite in New York?

A. I had seen him on probably three or four occasions.

Q. And had you visited with him in New York?

A. I never visited with him in New York. I had met him after

Court; because I was principally attorney in that case, and he appeared in New York; of course, not being a member of the New York Bar, I appeared through Mr. Newman. I argued all the motions in Court; I argued the motion for the reduction of bail, and some preliminary matters, and Newman appeared, merely having his name on the record as attorney of residence in New York.

Q. Well, you knew him in a professional way then?

A. Yes sir.

Q. Not socially?

A. No sir. I don't know whether he is married, or has any family, or anything about it. I don't know anything about it, except by hearsay. In fact, Mr. Newman and I never got along; could not get along. I could not stay in the same office. I left the office on account of Newman; we were always at daggers' heads, every time we met; absolutely no unity or harmony between us. And I got out of the case principally because I could not do any business with him.

Q. Well, were you in the matter of Sam Wheeler with him?

A. In Washington?

Q. Either Washington or New York?

A. There was only one matter of Sam Wheeler that I know of. Sam Wheeler is one of the parties named in the bucket shop that I have heretofore referred to in this testimony.

Q. In Washington?

A. Yes sir.

Q. Sam Wheeler and Harrison Kinear?

A. Yes; Harrison Kinear.

Q. What happened to the case; never brought to trial?

A. Never brought to trial. He just came to Washington to arrange for bond, and he brought Kinear and Wheeler with him, as I recall, and came down there representing another attorney, and I appeared and had my father give bond for Kinear, Wheeler, and Easterday. That is the first time I ever met Newman.

Q. Are these the only two check books of the account of Sullivan & Company with the Bankers Trust Co.? (Indicating—two check stub books).

A. As far as I know, they are.

Mr. Myers: I offer these two check books in evidence.

891 Two check books marked Exhibits 1 and 2 of this date.

Q. The first checks is No. 1001; is that right? (Indicating.)

A. 1001, yes.

Q. Will you please state what that is for?

A. National City, that is to pay drafts drawn, one for the account of the Annapolis office.

Q. Is this in your own handwriting? (Indicating.)

A. No sir.

Q. In whose handwriting is that?

A. Browder's.

Q. Was that a legitimate transaction?

A. Yes sir.

Q. What was that for?

A. To pay drafts for out of town, drawn on us.

Q. What does that mean, drafts?

A. Sullivan & Company had a method of drawing drafts, allowing the branch offices and managers to draw drafts, and the money being kept in New York, when a draft would come up, it would be paid.

Q. Well, were those drafts covered by this check No. 1001 all bona fide business drafts?

A. Some of them were salary; some of it was for printing and things of that kind. It seems to be bona fide.

Q. Where are the check books prior to October 14th 1919?

A. Right here. (Indicating additional check books.)

892 Q. Then you first started to draw checks July 11th 1919? (Indicating in check book.)

A. No sir.

Q. Well, when?

A. June.

Mr. Myers: I offer these two additional check books in evidence.

Marked Exhibits 3 and 4 of this date.

Q. Are these four check books, marked Exhibits 1, 2, 3, and 4 of this date, all the check books of Sullivan & Company?

A. No sir.

Q. Well, where are the others?

A. I do not know.

Q. What other check books did you have?

A. We had one on the Metropolitan National; that is in the Washington office now, in McNeil's office. That was only used to pay out small expenses and things in Washington, and to transfer money to New York. And one in the Riggs National; that is in Washington. And there is one on the Continental Trust Co.; that is in Washington. And there is probably one on the Metropolitan National Bank. All except the Riggs National and the Continental Trust were dated prior to October 14th 1919.

NORMAN S. BOWLES.

Signed and sworn to before me this 7th day of April 1920.

ALEX GILCHRIST, JR.,
Special Commissioner.

Adjourned.

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(March 25/20.)

NORMAN S. BOWLES recalled.

Examined by Mr. Myers:

Q. Mr. Bowles, please tell us everything about Secor, Weil & Company, so that we have it clearly in the record once and for all time.

A. The account of Secor, Weil & Company was opened by Easterday. Easterday was particularly well known to a man named Ike Hessberg, who was junior partner of the firm of Secor, Weil & Company. We opened an account over there and deposited some cash, probably four or \$5,000. We used that account particularly to buy odd lots of stock for customers at first; and later on, during the time that we were off of the Consolidated, not doing business over there for probably a week—maybe ten days—we bought and sold practically all of our stock through them. We also used Secor, Weil & Company as a loan broker, so to speak. We would buy on the Consolidated, have the stuff come in to us, and send it over to Secor, Weil & Company to hold for us; and they were to hold it, certain stock, for us. We paid Secor, Weil full commission for every deal they ever made. We had no split of any kind, sort or description. Easterday left us under the impression that he had some arrangement with them. If he did, it was a personal arrangement of Easterday and Ike Hessberg. They did not split commissions with us. Our account with them was fairly heavy and

894 fairly active, and was some friendship, so to speak; between Easterday and that company, which made the account a little more than a business account, I would say; there was a good bit of friendship there, and they did us favors, or were supposed to have done us favors. But according to the books, we dropped over to Secor, Weil & Company some forty or \$50,000 in a very few days. As to whether or not that was a legitimate loss, it will take them to prove.

Q. Well, tell us all about that now.

A. Well, Easterday would have to tell you, because during all the time of practically all the dealings with Secor, Weil & Company, I was in Washington and had absolutely nothing to do with it.

Q. Well, what have you heard about it?

A. Well, I heard——

Q. (interrupting): And from whom?

A. I heard from Easterday that he was buying and selling all his stock through the big Exchange, through Secor, Weil & Company. And I notice from the books lots of hundreds, and even up as high as thousands, shares of stock bought, always at the top of the market, and apparently sold at the bottom of the market. Whether there was any working agreement between Secor, Weil and Easterday

I do not know. Personally, I do not believe there was; but 895 Sullivan & Company, as a company, always suffered a considerable loss by any dealings that Easterday had with Secor, Weil. Ike Hessberg would give Easterday a tip as to when to buy and when to sell; and for that reason the account was practically worked by Secor, Weil.

Q. Now, have you told us everything that you can recall about that?

A. Everything that I can recall about Secor, Weil, unless it comes in connection with some testimony probably on the checks and things of that kind. I know one thing, I might state right here: That they had no right to recover that \$48,000.

Q. What is the 48,000 dollar item?

A. The \$48,000 is we sold them some stock where we received a certified check to the order of Sullivan & Company; and we had that certified check, or Browder had it, and was about ready to deposit it in the Bankers Trust Company, when Secor, Weil & Company got it away from him; and I believe that they bought Browder to deliver up the check of Sullivan & Company. In other words, I think they paid our bookkeeper some three or \$400, I am not sure of the amount, and this is hearsay, but from all that has gone before, I think, to my mind, that it is true; that they bought the 48,000 dollar check from our bookkeeper, Browder, or our cashier, Browder, back from Sullivan & Company and he returned it.

896 Q. I do not get that clearly; you had better go into that a little more in detail, Mr. Bowles.

A. They sent us on the——

Q. (interrupting): When was that?

A. On the 17th of November, or the 18th of November 1919, they sent him one or two checks; among the others was a check of 48,000 some odd hundred dollars. Before Browder had an opportunity—that was a certified check—and before Browder had an opportunity to deposit the check, Secor, Weil & Company, through its agents, particularly Mr. Secor himself, came over to our place, so I understand, and persuaded Browder to return the check which was made out to the order of Sullivan & Company, and had been delivered to us in payment of certain stocks. I understand that they paid Browder some two or three, maybe \$400—\$400 is my recollection—to deliver that check, or re-deliver that check to them.

Q. Well, from whom do you understand that?

A. I understand that from Mr. Easterday; and I examined Browder—kind of cross examined Browder as to whether or not he had not held out some money on us that day; I thought there was a 10,000 dollar check which was not accounted for; and I gathered that he possibly got \$400 on that day; and I attributed that
897 \$400 to be the same \$400 that Easterday informed me that Secor, Weil paid Browder to return the 48,000 dollar check.

Now that is all I know about Secor, Weil & Company.

Q. What securities have Secor, Weil & Company now, from Sullivan & Company?

A. Secor, Weil had on, the 18th day of November 1919, all the stock that we were carrying for our customers. Those stocks, divided into 10, 20, 30, and 40, and maybe 100 share lots; margin accounts.

Q. Well, have you any record of what they have?

A. Yes; the books show that.

Q. Will you please state——

A. (Interrupting.) And their statement also showed it.

Q. Where is their statement?

A. Mr. Wilcox had the statement, and it showed it. They informed me by telephone that after selling out the small stocks that we had, that they credited our account with some 2800 or \$3,000, they would not be exact; and I have repeatedly demanded an accounting from them, but have never received it.

Q. Do they claim that there is money due to them from Sullivan & Company?

A. Yes sir.

Q. How much?

A. 43,000 some odd dollars.

Q. And they say they have sold the collateral against that?

A. They said they sold the collateral against that.

Q. And you say that Mr. Wilcox has a list of that collateral?

A. Mr. Wilcox has a corrected list; a copy of their books—certified copy and photograph copy of their books.

Q. What was the value of that stock at the time, last November?

A. Probably \$3,000; that was the small stock carried off the board. Now the stock that they had, which we obtained through the Wall, Steele, and Enright accounts, amounted to somewhere in the neighborhood of \$100,000; my best opinion is about \$90,000; and a correct list of that stock is with Mr. Wilcox. He has a certified copy of it; the shares, numbers, and all. And against both the small account and the certificates that they hold obtained through these Wall, Steele and Enright accounts, they claim a balance of 43,000 some odd dollars. But they offered to settle—I sent to New York and had Mr. Wampler clear up the matter with the Bankers Trust Company, so that we could obtain that \$26,000 to pay off our customers in Washington. Secor, Weil had filed suit, which was not a proper suit, but it was sufficient for the time being to tie up that money. They offered to release that suit and to settle the claim with them for \$20,000, returning all of the stocks and all of the securities deposited with them by Sullivan & Company. In other words, they agreed to settle for less than 50 per cent on the dollar, at a time when we were not in bankruptcy, but immediately after this matter came up.

Q. Now, let me go back a bit. Now have you told the Court everything that you can recall about Secor, Weil & Company?

A. Everything that I recall at this minute; unless something comes to my mind while this testimony is being given.

Q. In your opinion, were the transactions with Secor, Weil & Company honest, businesslike transactions, so far as Secor, Weil & Company are concerned?

A. Well, while we were dealing with them I always believed that they were.

Q. But in the light of subsequent events?

A. I am inclined to believe that they made considerably more money on us than they had any right to make.

Q. Now, what does that mean?

A. For instance, we sold them at one time Crucible stock, 100 or 200 shares, and they reported the sale some six or eight points away from the market, which meant a loss of a couple of thousand dollars.

Q. How could they do that?

A. Well, for instance, we ordered Crucible Steel sold at 236 or 239, and they reported to us 232 or 233.

Q. I mean, that could not be done unless someone on your side of the fence was dishonest; isn't that so?

A. Yes, it could, because Crucible, for that day, dropped as low as 232 and 233; and instead of reporting the sale back immediately, they waited a considerable length of time, until the market was down at the bottom, and gave us the bottom figures. Now, as to whether they put the order in and could not sell it, or not, I am not prepared to say. But it always stuck in my craw as a very shady deal, and particularly in the light of the fact that there were so many of them that were always against us, and absolutely none that ever favored us.

Q. Well, is it your opinion and best belief that Secor, Weil & Company had bribed Mr. Easterday?

A. No, I do not think that they had bribed Mr. Easterday; but I believe—they never have admitted to anybody, either before our troubles or subsequent, that they ever knew that Easterday was connected with our firm, so far as I know; and for that reason they seemed to be withholding something.

Q. Well, just what do you believe the relations were?

A. And I believe that they figured that Easterday did not
901 know anything about the brokerage business—and they were absolutely correct, no question about that.

Q. And it is your belief that they took advantage of him?

A. And they just took advantage of him at every turn, and put us in the hole every shot they could.

Q. Well, do you believe Easterday profitted by that?

A. No, I do not believe that Easterday profitted by Secor, Weil's at the time; but, candidly speaking, I believe that Easterday figured on a profit with them at a later date, probably some settlement; if you ask me for the truth, that is the truth. And that Easterday and Ike Hessberg had some kind of an arrangement whereby, at a later date, there was a settlement coming off to Easterday. He may have intended to return it to Sullivan & Company; but we always gave him to understand that Ike Hessberg—I said I did not like the deal we got over there; it looked like we were not getting a fair deal. I did not see any reason for paying full commission, and things. And he said always that we would get a Christmas present; which was an indication that some time or other there would be some kind of a return for it. They could not give it, as members of the Exchange, but some time or other we were going to get something. How
902 much of it, or whatever that return was, I did not know. But it looked strange that in this period of thirty days, forty days at the outside, that Secor, Weil & Company made on us approximately \$50,000. I do not think that a man could be as bad a guesser of the market as that.

Q. Well, did you ever tax Mr. Easterday with this?

A. Yes; I have often spoken to Easterday about it before; and, in a knowing-like way, he said, kind of that way, "Oh yes; they were wise." I said "You always represented Secor, Weil—when we came to New York I told you that I wanted to deal with a firm that I could rely on; that I did not know much about the brokerage business, and I wanted a firm that I could rely on; and you introduced me to Secor, Weil, with the wonderful recommendation of Ike Hessberg, a friend of yours. It is my candid belief that Secor,

Weil & Company handed us a raw deal. In fact, I don't believe they bought and sold the stocks." Easterday suggested that he believed that also.

Q. Well then, were all those shares of stock that you had up with Secor, Weil & Company, stolen securities?

A. No. We did a considerable amount of business with them. All of our Consolidated business was done with them. But towards the end—for instance, loans that they took up from the Bankers Trust Company, that \$21,000, they still have. And \$60,000, or \$55,000, later made 80,000, taken up from the Seaboard National Bank. Those loans were secured by stocks obtained from the Wall, Enright and Steele accounts, which of course were obtained from the source of Arnstein and Cohen. Other stocks that they had were stocks that were received in the regular course of business.

Q. Then your relations with Secor, Weil & Company lasted about thirty days?

A. Not over forty days.

Q. When did they start, to the best of your recollection?

A. About around the first week in October 1919. We may have bought a little stock from them October 1st; but our real business did not begin with them until the first week in October; I would say that six weeks would cover it entirely.

Q. Now please tell the Court everything about your relations with the Bankers Trust Company; when they started and when they ended.

A. On the 14th day of October 1919 I was going out to open an account in some bank in New York. I had been recommended to the Franklin Trust Company, but we were renting from the Bankers Trust Company, No. 10 Wall Street, and there was in the office at the time when I started to open the account, a representative of the Bankers Trust Company; and he took me down and introduced me to one of the officers of the Bankers Trust, and I opened an account there and deposited some 5,800 some odd dollars. Later in the day we deposited \$5,000. That account was Sullivan & Company, by N. S. Bowles. The Bankers Trust Company suggested that it would be better to have both members of the firm sign the checks, after the account had been opened; and feeling that it might delay our opportunity to draw from the bank moneys that we had deposited, I talked with Easterday about it, and Easterday signed D. W. Sullivan's name to the account. Sullivan never did have power to draw on this account; it was always Sullivan & Company, by N. S. Bowles; and I drew probably one or two checks against the account; not more; I doubt if I drew any.

Q. Did Sullivan have the right, with the Bankers Trust Company, to draw alone or with you?

A. Sullivan had no right to draw at all.

Q. I mean Easterday.

A. Easterday had the right to draw individually; and I had the right to draw individually. It seems that when Sullivan found it

out, he was very much incensed; and I told him to cancel the signature by Easterday; but somehow or other, that was never done.

Q. Then Easterday's signature card at the Bankers Trust Company was a forgery?

905 A. No, it was not a forgery; because——

Q. (Interrupting.) Why not?

A. Well, it was not a forgery, because Sullivan did give Easterday the right to sign his name; but it don't run in my mind—it never ran any further than sufficient power to carry on the business.

Q. Did Sullivan ever give Easterday, to your knowledge, the right to sign his name on the signature card at the Bankers Trust Company? Now that is the question.

A. Not at the time that he did it; but afterwards he ratified it, and talked it over, and he was going to withdraw it; but he was afraid that if he did withdraw it, it would cause some comment there; and therefore he had Easterday sign up a book of blank checks, and I understood that those checks were to be deposited in our safe in 10 Wall Street, and that no moneys were to be drawn from the bank except by order of Sullivan, or by Browder in due course of the business. That no checks for any personal matter, or for any large expense, was to be written, unless O. K'd. by Sullivan or by me over the wire from Washington. This however, I do not believe was followed; according to the checks, it seems not to have been carried out; Browder disobeyed orders.

906 Q. Have you told us about all the relations with the Bankers Trust Company?

A. On the 16th, probably, of October 1919, Mr. Sullivan came to New York, or had come here on the 15th probably, and on the 16th he secured a loan from the Bankers Trust Company of \$25,000; and later on, about four or five days after the loan was made, the Bankers Trust Company was paid \$4,000 on that original loan of \$25,000, reducing the loan to \$21,000, with interest. This loan was secured by 100 shares of Atlantic Gulf & West Indies, and a temporary certificate of 100 shares of Retail Stores. That loan was subsequently taken up by Secor, Weil, & Company, and attached to a sight draft and sent to Washington, and I received it. But I had gotten tired of making loans, and gotten sick and disgusted with the business, and I returned it and said that I would not have anything further to do with it. Now, Secor, Weil & Company have that loan of \$21,000, and they have the stock, as above enumerated. The account at the Bankers Trust Company was used as our regular banking account in New York. We checked on it from time to time; made all of our deposits in that account, so to speak; there was very few outside of it; and we did our regular business through the Bankers Trust Company in New York. All moneys should have been deposited in that bank, and should have been drawn out by
907 checks on the Bankers Trust. On the 18th of October 1919 there was deposited in the Bankers Trust Company some 40 odd thousand dollars, and what -as paid out for the Clearing House and so forth, reduced that account to its present balance of \$26,754.92, to my recollection.

Q. Have you told us everything about your relations with the Bankers Trust Company?

A. Subsequent to our troubles, they had refused a payment of a check on account, and we sent an attorney here to see them, and they agreed to release the money, and admitted that it had been improperly held up by Secor, Weil & Company. And the balance there now is held up by Secor, Weil & Company on some kind of suit. Outside of that, I do not believe we had any other relations with them.

Q. Is this the first check drawn out of the Bankers Trust Company, No. 1001? (Indicating in stub of check book.)

A. Yes.

Q. That is dated October 14th 1919, is it?

A. Yes; that is numbered by me, and drawn by Browder.

Q. And that was drawn to the order of the National City Bank?

A. Yes sir.

Q. That was a business transaction?

A. Business transaction.

908 Q. No question about it?

A. No question about it. Now these things will show how it was done. Take the 14th of October. (Indicating.) They are all right. We had a way of doing business, by having the branch offices, Washington, Frederick, and Annapolis branches, draw drafts against our New York office, and those drafts were paid in New York by check supposed to be drawn on the Bankers Trust Company. It seemed the custom to have drafts come in, runners would leave the drafts there, and Browder would draw sufficient money out of the bank to pay them in a lump.

Q. Were all those drafts honest and bona fide?

A. All honest, bona fide drafts.

Q. The second check, 1002, is also drawn to the order of the National City Bank, for \$500. Is that an honest, bona fide transaction?

A. Yes sir, it is.

Q. Do you make the same answer as to the third one: October 14th 1919, \$37.50? (Indicating.)

A. Internal Revenue. That is honest.

Q. What was that for?

A. Internal Revenue; bought a license; that \$500 was to open an account in Annapolis.

Q. The next check is Consolidated Clearing House, \$2,585.95, No. 1004; what is that?

A. That is a difference account on the Consolidated.

909 Q. What does that mean?

A. That means that we owed the Consolidated for stocks, a balance of \$2,585.95; and we paid it.

Q. That next check, 1005, made to Sam Smerling, \$150?

A. That man drew out, account No. 4, New York; drew out \$150.

Q. Is that a bona fide transaction?

A. Yes sir.

Q. October 14th, No. 1006, \$27.78, to the order of Bankers Trust Company; that was for rent?

A. Yes; that is for rent.

Q. The next check is 1007, for \$75, to A. W. Brown; what is that about?

A. That is expense account; a man that did some work for us.

Q. Who is Brown?

A. I don't know; he is working there in the office, or something; he was a telegraph operator.

Q. That was an honest transaction?

A. Yes; that is honest.

Q. No. 1008 Morris & Wilmarth, \$135?

A. Yes; that is a mark-up.

Q. What does that mean?

A. They marked us up on the Floor; and the difference between 62 up to 76, would be the number of shares we carried, and made us owe them \$135.

Q. I show you check No. 1009 for \$59.74, to the order of
910 the Hanover National Bank; what is that about?

A. That is a draft on us for margin.

Q. Is that a bona fide transaction?

A. That is a bona fide draft.

Q. Who is Theodore Block?

A. He is a man we owed some money to; an attorney down there.

Q. What was that about; what was that for?

A. Well, I personally owed Block \$59 some cents, and the firm paid that. That is charged to me.

Q. I do not care how it is charged; that is a personal debt of yours that was paid by the firm by this check; is that right?

A. Yes, that is right.

Q. On the first page of this check book it shows deposits. What are they? (Indicating.)

A. That is a deposit I made in the Seaboard National Bank.

Q. What is that? Read it. What is the first item, \$383.35?

A. \$383.35, S. W.

Q. What does that mean?

A. I could not tell you.

Q. Well, who is "W"?

A. I could not tell you—Secor, Weil it looks it may be.

Q. What is that about?

A. A check they gave us, if that is Secor, Weil.

Q. What is the next item, \$270.41?

911 A. Herbert T. Greenwood owed us that money.

Q. It says "Certificate" there. (Indicating.)

A. No; "Certified." Greenwood certified the check.

Q. The next item, \$1,000, New York account No. 4?

A. A man bought stock and he gave us \$1,000 deposit.

Q. Well, is that Smerling?

A. Smerling, No. 4.

Q. The next deposit says "400, Annapolis office." What does that mean?

A. Drew \$400 on the Annapolis office. We deposited 500 by this check you see.

Q. Then the total deposits were \$2,054.16; is that right?

A. Yes sir.

Q. Then you deposited another—

A. (Interrupting.) No; we had all one.

Q. Then you deposited the same time \$3,800 cash?

A. Yes sir.

Q. Where did you get that from?

A. Out of my pocket.

Q. What?

A. I borrowed it myself from the old man.

Q. You mean that was money that your father loaned?

A. Yes sir.

Q. Then you deposited all together \$5,854.16?

A. Right.

Q. Then you also made an additional deposit of \$5,000?

A. Wired from Washington.

912 Q. So you deposited all together in the beginning \$10,854.16?

A. Two deposits that is.

Q. The same date?

A. Yes sir.

Q. The next check, 1010, is for \$21.40, same date, to Bigelow & Company.

A. That is stationery.

Q. The next check is 1011, same date, \$168.96, Telephone Company; is that right?

A. That is right.

Q. The next date, check No. 1012, Empire Trust Company, \$4,000. Now please state to the Court what that is all about.

A. That \$4,000 we had—Easterday had gotten short, by reason of depositing backward and forward between Washington and New York, in the Empire Trust Company and the National Metropolitan, and he was \$4,000 short in New York; and he paid that \$4,000. These checks here show it.

Q. Anything else you want to say about that?

A. No; that is all.

Q. On the same date, October 15th, I show you another check, No. 1013, \$400 to the order of the Chase National Bank.

A. That is to take up a draft for Station, \$400.

Q. What is that about?

A. Washington draft for a customer; owed him money.

Q. The same date, check No. 1014, \$150; what is that for?

A. Cash to expense. You will have to ask Mr. Easterday;

913 I do not know.

Q. The same date, check No. 1015, Sam Smerling, \$1,044?

A. Well, that looks like paying a customer, but it don't look good to me.

Q. You think that is a dishonest transaction?

A. No; but I don't see how that fellow put in \$1,000 and drew out \$154, and now he draws out \$1,044. In other words, he is drawing out \$1,200.

Q. And putting in \$1,000?

A. And put in \$1,000. And it seems that Jacobs got a commission for bringing the account in, for an account that was in one day he seems to have knocked out \$200, and we paid a commission on it, without my consent.

Q. Has Easterday ever spoken to you about that?

A. Yes; I have given him (blank) but he never was able to explain it. He said "That is the way they do business in New York." He will have to explain that.

Q. I show you the next check, on the same date, 1016, \$75.

A. Jim Breen, salary for Frederick.

Q. Is that all right?

A. That is O. K.

Q. The same date, check 1017, \$297, David Kramer.

A. Office furniture for Wall Street office. That is all right.

Q. The same date, check No. 1018, Hanover National
914 Bank, \$353.

A. Apparently that is all right, but I would ask Easterday about it.

Q. In whose handwriting is that?

A. That is in Easterday's handwriting.

Q. Easterday's; and all the previous ones are in Browder's; is that right?

A. Yes, Browder's.

Q. That looks very suspicious, does it not?

A. I do not know whether—Easterday might just fill that in.

Q. Where are the canceled checks?

A. I could not tell you. Each month—that is October; so October's canceled checks had been checked up.

Q. What became of the checks?

A. Probably Browder can tell you.

Q. How?

A. Browder should be able to tell you; he was authorized to hold all checks so that we could check them up.

Q. Did you ever discuss this check with Browder or Easterday?

A. No; I never saw the book until I was here the other day; never had an opportunity to discuss it.

Q. I show you another check, the same date, No. 1019, National City Bank, \$1,508.90, to take up draft No. 508, Joseph M. Housler.

A. That is all right.

Q. Is that a bona fide transaction?

A. Yes sir.

915 Q. Who is Housler?

A. He is a customer.

Q. How do you know that is a bona fide transaction?

A. Well, I remember Housler in Washington getting a draft for about \$1,500; I do not remember the exact figures.

Q. Where did he pay the money in for it?

A. He paid the money in in the course of business.

Q. Where does that show? In what book?

A. That will show on this ledger. (Indicating ledger.)

Q. Let us see it. We want to be sure that some of the money went properly.

A. Joseph M. Housler deposited a check for \$1,000. (Referring to ledger.)

Q. When?

A. On August 7th 1919. Later put a check up, on October 25th, for \$500. What date is the draft dated?

Q. October 16th.

A. October 16th; and he got a draft, to balance, \$1,508.90; is that it?

Q. Yes.

A. He got that. Check to balance, \$1,508.90. (Indicating in ledger.)

Q. I show you, same date, October 16th, check No. 1020, \$1,000, to the order of the First National Bank, to take up draft No. 526 in favor of R. M. Newman; what is that all about?

A. I do not know; I was not in New York at the time.

Q. Where is that shown on the ledger?

916 A. It is not shown, so far as I know. I do not know whether Newman had an account in here or not. (Referring to ledger.)

Q. In whose handwriting is the stub?

A. Browder's.

Q. And you do not know anything about that?

A. No sir. I was not in New York. I never saw it until I came here the last time.

Q. Well, after you discovered it did you discuss it with anyone?

A. I told Easterday that he would have to explain them to you; that I did not know anything about it. I don't know a thing in the world about it. I understand that Newman was down in the office begging for money every day, for some reason or other. I did not have anything to do with that; and they would never let me know what they did with Newman.

Q. No. 1021, October 16th, Liberty National Bank, \$195, to take up draft No. 5511 in favor of E. H. Snyder & Company.

A. That is all right.

Q. That is a bona fide transaction?

A. Yes sir.

Q. Check No. 1022, October 16th, for \$91.80, in favor of the Federal Reserve Bank, to take up draft No. 5504, in favor of William H. Krause.

A. That is all right.

Q. Same date, check No. 1023, in favor of the Federal Reserve Bank, to take up draft No. 5505, in favor of E. A. Teiber.

917 A. That is all right.

Q. Same date, check for \$2,000, No. 1024, to the order of Mount & Robertson.

A. That is office fixtures.

Q. That is all right?

A. Yes; Mount & Robertson had executed a judgment against Sullivan & Company that attached the furniture; that was in January; brought on the bankruptcy proceedings. That attachment is no good, but they have furniture of ours that amounts to probably \$1,500. They would come in as a creditor, wouldn't they?

Q. No. 1025, October 16th, cash \$50; what do you know about that?

A. I do not know anything about any of these cash transactions.

Q. The same date, No. 1026, cash, \$100; do you make the same answer?

A. The same answer.

Q. The same date, check No. 1027, \$2,500 cash; same answer?

A. Same answer.

Q. Then you made some more deposits, did you not?

A. We made deposits from time to time, right along.

Q. Then you deposited cash \$2,000 on the 16th of October; is that right?

A. Yes sir.

Q. Where did that come from?

A. Most of the cash came from Washington, sent by cash from Washington right along.

Q. Then you made, on the same date, another deposit of 918 \$25,000?

A. That is a loan.

Q. Loan from where?

A. About which I spoke before.

Q. From where?

A. With the Bankers Trust Company, \$25,000.

Q. You also deposited a check there to accounts Nos. 4 and 5?

A. New York No. 4 and 5.

Q. New York No. 4 and 5 were who? Samuel Smerling was No. 4?

A. Yes sir.

Q. And who is No. 5?

A. A Smerling.

Q. Did you ever see them?

A. I never saw them.

Q. Did you ever see Danny Jacobs?

A. Did I ever see him?

Q. Yes.

A. Yes.

Q. You also deposited on the same date another cash item, \$5,000; is that right?

A. I probably sent that from Washington. I sent a lot of money up here from Washington.

Q. No. 1028, cash, \$130.

A. I do not know anything about it. Ask Easterday.

Q. 1029, Grayson H. Staley, account No. 2, \$1,500. What does that mean?

A. That is a Frederick account; that is all right; I remember that.

Q. Where is that entered: in the ledger?

A. Yes. He has taken out all the ledger sheets; but you see in the total over here, Staley; we paid him \$800, \$1,000, 1,200—oh, that is the money he put up. (Indicating.) He put up \$3,000; and he drew out—I cannot tell you how he drew it out; he drew it out by draft, and I cannot tell you how he got that. But I remember paying him \$1,500. That fellow Breen was fired on account of that. Easterday fired him the same day for having given him that check; because he caused that man to draw that \$1,500.

Q. Who caused him?

A. Breen. I remember that transaction of \$1,500.

Q. That is a bona fide transaction?

A. That is a bona fide transaction.

Q. I show you check No. 1030, dated October 17th, George Wall, \$15,000; in whose handwriting is the name "George Wall"?

A. Browder's.

Q. And all the previous ones are Browder's except—

A. (Interrupting.) Except the one I have enumerated.

Q. Except this one of the Hanover National Bank? (Indicating.)

A. No. 1018.

Q. That is in Easterday's handwriting?

A. Yes sir.

Q. All the previous checks are in the handwriting of Browder?

A. Yes sir. Check No. 1030, payable to George Wall.

920 Q. Who was that handed to, do you know?

A. That was the one that Sullivan was somewhat mixed up on, as to whether he handed him that money over in Hoboken or whether he handed it to him down here on Pine Street, New York. So I would not say now anything about it, because I don't know. But I know that that item of \$15,000 went to Wall.

Q. The check was drawn to the order of Wall, wasn't it?

A. No; the check was drawn to cash probably, and credited to the Wall account.

Q. And Mr. Sullivan went to the bank and got the money?

A. Yes sir. Drawn to cash, see (indicating). \$15,000 drawn to cash.

Q. I show you another check, October 17th, No. 1031, Secor, Weil & Company, \$1,000. What does that mean?

A. Easterday will have to explain that.

Q. You do not know anything about it?

A. Not a thing; I haven't any idea, or any way to figure it out.

Q. The next check is No. 1032, dated October 17th, to the Equitable Trust Company of New York, \$109.27. What is that about?

A. Draft 512. That is to pay one of the customers; that is either Annapolis or Washington. Now here is the way to find out: You see these little numbers will come from Annapolis or Frederick. Here is the way to find out which that is: That is to pay some customer.

Q. The next check is No. 1033, to the Bank of America for \$223.87

A. That is to pay a draft.

Q. The next check is No. 1034, National City Bank, \$30.

A. That is to pay a draft.

Q. The question is not whether it is to pay a draft; but whether it is to pay an honest, legitimate draft.

A. When I say draft, I mean an honest, legitimate transaction.

Q. The next is No. 1035, American Exchange National Bank, \$40.

A. That is a legitimate draft.

Q. The next was 1036, Federal Reserve Bank, New York, \$522.64.

A. That is cash drawn out to pay on five different drafts that came in that day.

Q. Then on October 17th, check No. 1037, \$100, "Expense of Mr. Bowman." What is that about?

A. That is Easterday going to Philadelphia.

Q. It says "Expense of Mr. Bowman."

A. Yes; that is probably Easterday going to Philadelphia.

Q. What about?

A. He went down there. Easterday was figuring on opening an office down there, and he went down there, without consulting anybody; and I vetoed the proposition.

Q. Why did he put down Mr. Bowman?

A. Well, somebody may have gone down with him; he may
922 have taken somebody down with him. I believe there is a man that had some influence with Wanamaker, and Wanamaker had a big place——

Q. (Interrupting.) What is that?

A. He had somebody that had some influence with Wanamaker, and Wanamaker had a store in Philadelphia that he wanted to rent all furnished, and he evidently took somebody down there. I know that; and he just took that \$100 expense; and I knew that, and I kicked on it.

Q. Check No. 1038, \$700 cash.

A. That is a salary check, but it looks to me to be too much. Ask Easterday about it.

Q. No. 1039, same date, Morris & Wilmarth, \$60; that is all right, is it?

A. Yes sir.

Q. No. 1040, Knox Hat Company, \$225; what is that about?

A. It looks like somebody—it looks like a personal charge, and Browder will have to explain whether that went to personal account or not.

Q. No. 1041, J. L. Wilson, \$150.

A. Two weeks' salary at Frederick.

Q. That is all right?

A. That is all right.

Q. No. 1042, \$130, Morris & Wilmarth; is that all right?

A. That is O. K.

923 Q. There is nothing wrong about any of these Morris & Wilmarth checks?

- A. No, nothing wrong about any of those Consolidated.
 Q. No. 1043, \$505.67, Federal Reserve Bank, New York.
 A. That is cash drawn out to pay four drafts, which were properly drawn and paid.
 Q. No. 1044, \$1,000, Mechanics & Metals National Bank.
 A. That is to meet a draft, Royal McNey, account No. 93, \$1,000.
 Q. Is that all right?
 A. Yes.
 Q. No. 1045, Liberty National Bank, \$70.
 A. Drafts No. 514.
 Q. That is all right?
 A. O. K.
 Q. There was a deposit on the 18th, \$40; it says "Deposit check on account of sale of safe." Is that all right?
 A. Yes. We sold a safe.
 Q. A small safe that you had no more use for?
 A. Yes. We have got one down there now.
 Q. Where is that?
 A. 10 Wall Street.
 Q. Is that in there?
 A. Yes sir.
 Q. J. O. Wilson, \$75; what does that mean? He was returning some salary?
 A. It apparently looks as if he was getting \$150, and to pay his salary and Breen's salary, and that Breen's salary had already
 924 been paid.
 Q. So he was returning \$75?
 A. So he was returning the \$75.
 Q. No. 1046, Frank E. Salter, \$325.
 A. Paid directly in violation of my instructions, because I settled with that man in Washington, and he came up here and inveigled Sullivan to give him \$325 more.
 Q. The check is in the handwriting of Browder, isn't it?
 A. Yes; they paid it; that is a legitimate transaction; they settled with him.
 Q. Jerome Strickler, \$145.05, No. 1047.
 A. O. K.
 Q. No. 1048, October 20th, \$50 cash.
 A. \$25 that was paid to J. W. Henry is O. K.
 Q. And the other \$25?
 A. The other \$25, ask Easterday.
 Q. No. 1049, \$50, National Bank of Commerce.
 A. To pay a draft.
 Q. 1050, October 20th, \$25, Hanover National Bank.
 A. Apparently a draft. These drafts run big; 1,500 something.
 If they are Frederick and Annapolis drafts, they run from 500 up.
 Q. Where are they?
 A. You have only got the Washington book here.
 Q. Where are the other books?
 A. The other books are at Frederick or at Annapolis.

925 Q. In whose possession are they?

A. They are in the possession of—they are in the office; never taken out.

Q. Is there any reason why we can't get them?

A. No reason. Browder can explain to you, and he can show you in these books.

Q. No. 1051, October 20th, Federal Reserve Bank, \$103.

A. They were two drafts.

Q. No. 1052, same date, Bank of New York, \$93.

A. To pay a draft.

Q. 1053, same date, \$240.

A. To pay three drafts.

Q. No. 1054, same date, cash \$200.

A. It is payable to Easterday.

Q. It says here "J. Hill."

A. That is payable to Easterday; he got the money.

Q. 1055, October 20th, \$21.50.

A. That is for work.

Q. No. 1056, October 20th, Aeolian Company, \$100.

A. Mr. Easterday.

Q. Mr. Easterday was drawing funds of this firm to pay his personal debts; is that it?

A. I think that piano—he bought a piano up there.

Q. For his home?

A. Yes; and he returned it.

926 Q. Returned what?

A. The piano.

Q. He did not return the \$100?

A. He did not get it.

Q. Now, it says here, on the deposit side, under date of October 20th, "Secor, Weil, check \$628." What does that mean?

A. They gave us a check for \$628.

Q. That is a regular, bona fide transaction?

A. Yes sir.

Q. And J. W. Henry, \$25?

A. That is a draft.

Q. Is that all right?

A. Yes.

Q. And Sam Smerling, \$500?

A. That is all right; he paid on account.

Q. Well, it says "Check returned," doesn't it? Somebody gave him \$500 too much, didn't he?

A. Somebody gave him \$500, and evidently the check was not any good, and they deducted it.

Q. No. 1057, Guaranty Trust Company, \$94, payment of draft for Mr. Wampler. What is that about?

A. Wampler never got anything except it was legitimate. I suppose it must be some expense of some kind. I don't know what it was.

Q. No. 1058, Hanover National Bank, \$300.

A. That would be a draft.

Q. No. 1059, Bank of America, \$353.54.

A. To pay three drafts.

Q. No. 1060, Federal Reserve Bank, \$151.40.

A. That is to pay a draft to C. L. Johnson, of \$151.40.

Q. No. 1061, \$50 cash?

A. That is Easterday.

Q. 1062, cash \$100?

A. That is Sullivan. Now you notice that Sullivan has not gotten any salary up to the present time; that is, between October 14th and 21st—it says "Expense," not "Salary;" and you notice he has not got any salary. It says "Expense to salary."

Q. 1063, Manhattan Company, \$87.50.

A. I would like for you to ask Easterday about that. It looks like Manhattan Shirt Company to me. I do not know what it is.

Q. Charles H. Ditson, No. 1064, \$190.25; what does that mean?

A. Ask Easterday about that.

Q. No. 1065, Merchants' National Bank, \$86.

A. Ask Easterday.

Q. 1066, Bank of America, \$192.29.

A. Ask Easterday.

Q. You say none of those four last checks—you say that they are not in payment of business checks?

A. I do not think they are.

Q. For business transactions?

A. I do not think they are; I notice that these smaller numbers—

Q. (Interrupting.) What do you mean by the smaller numbers?

A. The numbers say in the 500's are the numbers that are not drawn out of Washington, and I cannot recall any of the names as being Annapolis or Frederick customers; and therefore, I am of the opinion that these smaller numbers were drawn on Sullivan & Company in New York, for matters about which I have no knowledge whatsoever; and that Easterday and Browder should explain them. There are none of them in the handwriting of Sullivan; but they are in the handwriting of Browder; and that Easterday had power to sign the checks, and all the checks are signed by him; and it should be up to them to explain. I am positive that Sullivan could not explain them, as he insisted the other day that he knew nothing about them; and I have not the slightest idea what they were drawn for.

Q. No. 1067, \$15.

A. Well, we treated the Consolidated Stock Exchange to a couple of seats to Washington and back; so that is all right. They came down to look the office over; that is all right.

Q. No. 1068, \$450.

A. That is all right; that is a draft to pay. It is in my handwriting; I imagine that is to pay a Washington customer.

Q. No. 1069, Federal Reserve Bank.

A. Easterday would have to explain the draft No. 536. The other two apparently are all right: Draft. No. 5513 is for \$127.30;

929 and draft No. 5517 is for \$175. There is a difference of \$50 that Easterday will have to explain.

Q. No. 1070, National Park Bank, \$584.42.

A. Account No. 90, payable to Miss Brinkley, Washington customer; O. K.

Q. No. 1071, National Park Bank, \$3,975.95, in payment of draft No. 594.

A. I would like to know who that is payable to. I could not explain it. No. 1072, for \$200, is payable to A. P. McCarthy, a Washington account, payable on draft 5522.

Q. No. 1073, National Park Bank, \$40.

A. That is apparently O. K.

Q. Where is that draft?

A. Whenever we used a stub book up, we sent the stubs to New York.

Q. No. 1074, Levy Brothers, \$157.50.

A. That is for clips for the board.

Q. No. 1075, Federal Reserve Bank, \$1,370.89, in payment of draft No. 545.

A. Ask Easterday.

Q. When you say "Ask Easterday" on all these matters, you mean that in your opinion these are dishonest transactions?

A. No. I say, in my opinion—when I say "Ask Easterday," I have no idea for what they were drawn, and there is nothing on the draft to indicate—on the check stub to indicate for what they are drawn; and it is either between Easterday and Browder
930 to explain, as the stubs are in Browder's handwriting, and the checks that match these stubs could have only been signed by Easterday; and I had absolutely nothing to do with them, and Sullivan could not have had anything.

Q. What is this deposit on October 23rd, Secor, Weil & Company, -1,200?

A. That is a check, probably, from Secor, Weil; it seems to be all right.

Q. And draft on Washington, Riggs National Bank, \$2,000?

A. That is just drawn on Washington, to take \$2,000.

Q. What is this item, check No. 1076, \$100?

A. Marked "Petty Cash." Ask Easterday.

Q. No. 1077, \$358.09, in payment of protest check.

A. That is O. K.

Q. No. 1078, \$25, National City Bank.

A. That is O. K.

Q. No. 1079, Federal Reserve Bank, \$1,171.36.

A. You will have to ask Easterday about that.

Q. No. 1080, \$109.82, Chemical National Bank.

A. You will have to ask Easterday about that. You see, some of these things, as you go down, payments like that, a couple of odd cents, it may be that he paid some Clearing House with it. I cannot tell; he will have to explain it; I am just giving you the ones I know are all right.

Q. No. 1081, Bank of America, \$272.64.

Q. A. I cannot explain what draft 519 was; but draft 5520 was drawn by me to the order of a man named Pfluge for \$50. The balance, Easterday can explain.

Q. No. 1082, \$50.

A. Ask Easterday.

Q. No. 1083, cash, \$500.

A. Easterday would have to explain it. That is about the amount of the salaries.

Q. No. 1084, \$50, Dougherty Detective Agency.

A. That is by Easterday. We never authorized any such payment.

Q. No. 1085, \$14.50, National Bank of Commerce?

A. Ask Easterday.

Q. No. 1086, \$150.

A. Ask Easterday.

Q. You do not know anything about any of those checks?

A. No.

Q. And you have never heard from Sullivan or Easterday or Browder about any of them?

A. No sir.

Q. No. 1087, \$150, Hanover National Bank.

A. Ask Easterday.

Q. No. 1088, \$100, Federal Reserve Bank.

A. Ask Easterday.

Q. No. 1090, Bank of America, \$13.05.

A. Ask Easterday.

Q. No. 1091, cash \$50.

A. That is payable to Minton; we subscribed to a service with Minton.

Q. No. 1092, Fifth National Bank, \$17.61.

A. Ask Easterday.

Q. No. 1093, cash, \$250.

A. You will have to ask Easterday about the whole thing. Ask Easterday and Sullivan. The reason I say that, I cannot get the Handwriting that is in. You will have to ask Easterday, Sullivan and Browder; because it looks to me to be in the handwriting of three people there. That looks like Sullivan's handwriting. (Indicating.)

Q. What looks like Sullivan's; read it.

A. Mes. 100." And shorthand for "N 50" and "D. W. S 50."

Q. That is all in Sullivan's handwriting?

A. That appears to be in Sullivan's handwriting.

Q. In whose handwriting is the rest of the stub?

A. Browder's.

Q. No. 1094, cash, 500.

A. "Account of Sullivan." Ask Easterday. I do not believe Dave ever got it.

Q. No. 1095 is all right: New York Telephone Company, \$10.91, isn't it?

A. Yes; that is all right.

Q. 1096 was canceled?

A. Yes.

Q. 1097 was a small matter, \$1.95. 1098, Dow, Jones & Company, \$22; that is O. K.?

A. Yes.

Q. 1099, Hanover National Bank, \$20.

A. O. K.

Q. 1100, New York Times, is O. K., 80 cents?

A. Yes sir.

933 Q. Then we come to an important check: No. 1101, October 28th 1919, cash \$10,000, account of Elmer E. Steele, New York office, New York account No. 6. Now tell us all about that, Mr. Bowles?

A. I know from personal knowledge absolutely nothing about it; but according to the check book, which is in the handwriting of Browder, the check was payable to cash and was credited against, or charged against the account of Elmer E. Steele, Commodore Hotel, on the 28th day of October 1919, cash \$10,000. I do not know where the money went.

Q. Well, did you talk with Sullivan about it?

A. I heard Sullivan testify that he gave it to him.

Q. To whom?

A. That he gave it to Cohen.

Q. Didn't Sullivan ever tell you about it before he testified?

A. No sir.

Q. You never knew before he testified?

A. I knew that Cohen got money from time to time; but he never told me any particular amount or any particular place. He just simply said: Whatever the books showed on the Steele, Enright and Wall accounts, was money paid to Cohen.

Q. Let us stop right there and go into that, so that we will clear that up. Tell the Court everything you know about those three accounts, from the beginning, and get through with it right
934 here.

A. The Wall account was opened in Washington, under the name of George Wall. It was opened by a man appearing and representing himself to be George Wall, and buying 100 shares of stock and putting up 500 shares of stock as security for the account, which man is correctly known as Mack Cohen. The two accounts which appear on the books of Sullivan & Company under the names of Steele and Enright, are accounts that were opened up later, in New York, by the same party, under those two names, giving the address as the Commodore Hotel. The three accounts are accounts of Cohen in his dealings with Sullivan, and the stocks obtained from Cohen are stocks that are now alleged to have been stolen stocks, that are held by Sullivan & Company, and deposited as collateral with the different banks: Riggs National, Washington; Continental Trust Company, Washington; Commercial National, Washington; and Franklin Trust Company of Philadelphia; and Secor, Weil & Company of New York; and are held by the District Attorney of

New York, Property Clerk I suppose; and 100 shares of Worthington Pump, supposed to be held by the Consolidated Stock Exchange. These stocks were all derived or received from Cohen and Arnstein, and any money paid out to them—any money about which I have testified, or will later testify, was paid out to them or shows payments to them under the names of Steele, Enright and Wall, said money was actually paid, to the best of my knowledge and belief, to Cohen.

Q. Did you ever see Arnstein in your life?

A. I never saw Arnstein in my life.

Q. Did you ever see Cohen?

A. I never saw Cohen in my life.

Q. When did you first learn about Sullivan's transactions with Cohen and Arnstein?

A. I first learned of their transactions with Cohen and Arnstein, as a fact, that they were dealing with them as Cohen and Arnstein, after Sullivan's release; that they were dealing with them under these names; but—

Q. (Interrupting:) But I am not talking about the names—

A. (Interrupting:) I was going to say but I learned about the first week in November 1919 that Sullivan was dealing very heavily with some New York customers, or alleged customers, and that their accounts were running up to fabulous amounts—and Mr. Dooling's files I think will show a letter written by me in October 1919 stating that I did not understand what they were doing; that I was only getting second hand information; that I did not think that they were playing square with me; I could not understand what the situation was in New York; where the money was coming from, or how they were operating; and unless I had some information right away I was going to quit. I think Mr. Dooling has that letter.

Q. Well now, what was the situation up to that time?

A. Up to that time Sullivan & Company, in New York, would send down sight drafts for me to take up, telling me over the wire, Easterday, that call money in New York was so high we could not afford to borrow money in New York on it; and if I could borrow at 6 per cent in Washington, to go ahead. And I had thought that I was doing Secor, Weil & Company a favor; because I figured that they were figuring in this; sending in their large loans down there; because the drafts that I received were signed by Secor, Weil. But I later learned that they were not interested in them, except through Sullivan & Company. As I say, I knew very little about the brokerage business; and they would tell me that on the wire, that everything was all right; that what I did not know was all right; or words to that effect.

Q. What was the financial condition of Sullivan & Company up to this time?

A. Up to this time? Up to the middle of November 1919? When do you mean by "this time"?

Q. Well, when you first learned about the Cohen and Arnstein transactions.

A. We were dealing in large sums, and we were doing financial transactions, about the middle of October 1919—

Q. When you first heard about the Cohen and Arnstein transactions, about the middle of October 1919—

A. (Interrupting.) No; I first heard that Newman was going to—on the 10th of October 1919 I first heard that Randolph Newman had a party in New York that he would introduce to Easterday, and that party would loan Easterday sufficient stock to get him out of his troubles.

Q. Now, tell us all about that.

A. And Easterday related that to Sullivan and myself about the time that I was making a loan—my father was making a loan with Robert H. McNeil, to secure for us the sum of \$20,000. And when Easterday related that to me, I had already secured sufficient money to put us about even with the board; that is, to about pay off our indebtedness in New York, and to meet practically all the running demands of any of our customers in Washington, Frederick and Annapolis. And when I gave that money to Easterday and Sullivan, I do not recall which one I gave it to, when they came to New York, and which money was to pay off the Clearing House and to meet running expenses of the office in New York. I did not have any faith in the loan of stock from Newman's friends, and I can truthfully say that I do not believe that Sullivan had any; and I made no further inquiry into it until October 15th 1919, when I saw Sullivan in Washington and Sullivan told me that he had secured a loan of stock from Randolph Newman's friend, and that to keep everything going in smooth running order, and not have any of the clerks know anything about it, that we were hard pressed, or needed any loans from outside sources. That they had arranged to get money and stock in in the form of an account under the name of George Wall. There was nothing at that time, or that day, to indicate that there was anything out of the ordinary, except that I was skeptical to believe *they* either Easterday or Sullivan could borrow any money; but they had told me that they were paying a big bonus for it, and I tried to make myself believe that it was all right. That is about the size of it.

Q. Well, you talked with Newman about it, didn't you?

A. Not a word.

Q. Neither before nor since?

A. And I do not speak to Randolph Newman; I have not spoken to Randolph Newman since some time in September 1919, when I told him what I thought of him, and quit him, over a small spat.

Q. You did not talk with Newman during October and November 1919?

A. Not alone never spoke to him—

939 Q. (Interrupting.) When did you first tax Sullivan with the proposition that these securities were stolen securities, in your opinion?

A. On and after the Baltimore transaction.

Q. Tell us about when.

A. Which was about November 10th 1919.

Q. What did you say to him and what did he say to you?

A. On or about the 9th of November 1919, a man named Lampert called me up and told me that 100 shares of Crucible stock given him by a man named W. D. Williams, and deposited by him as collateral in the National Savings & Trust Company of Washington, D. C., had been reported stolen by the transfer agent, who refused to transfer the stock. And he asked me what I knew about it. I told him I knew absolutely nothing about it; had had no dealings with Williams; had not seen him in weeks, and could not give him any information. He said "Williams is a good friend of Sullivan. Did Sullivan give him this stock?" And I told him that I did not believe that Sullivan gave it to him, but that I would find out. And thereupon I called long distance telephone to New York—I do not know whether it was New York or not; but I got him that evening; he either called me or I called him on the telephone; I do not recall now where he was. And I told him of it, and told him to

940 come right to Washington; that I wanted a show down.

Sullivan came to Washington on the 10th, and I met him at the Raleigh Hotel about three or 3:30. I had hardly entered the room when I walked Detectives O'Brien and Barbee, and told us that we were wanted at Headquarters. After some preliminaries I decided to go over. I went over and talked to Inspector Grant; and he and I had always been at daggers' points. Meanwhile Williams was arrested in Washington. And Sullivan told Grant he did not know anything about it. Sullivan told me he did not know anything about it; and Williams would not say anything about the transaction. And I was at a loss; I did not know what the situation was; I did not know where Williams had gotten the stock; Sullivan did not tell me, and I did not know. But when Sullivan came out of Headquarters—Grant allowed Sullivan and I to go—at least, he never detained us, but he detained Williams, and caused him to put up bond. He refused to tell anything about it, and they caused him to put up a bond. When we came out, I confronted Sullivan with the proposition that we were getting too damn much stock, and asked him to tell me the truth about that situation. And thereupon he told me that he gave the stock to Williams.

Q. Well, tell us everything that he told you.

941 A. He said "I gave that stock to Williams so that he could borrow some money for us on it." And he said "I guess we are in a hole." He said "This Wall account and that Steele account and this Enright account, it is all from one source, and that is that Randolph Newman"; and he said "Just like W. W. got you in a hole," meaning Easterday. He said "He has got us into it, and I was damn fool enough to follow along, and just got into it and didn't know which way to get out; didn't know what to do."

Q. Did he tell you all about it? You have not told us about—

A. (Interrupting.) He said he did not know what to do. I said "Come on and come over to the hotel and explain the whole situation to me." He went on and explained it to me; and he said that when he got to New York, following that conference on the

telephone with Newman on the 10th of October, that on the 11th, which I believe was on a Saturday night, he met a man named Arnstein, and Cohen——

Q. (Interrupting.) Well, before you go to that, won't you please state to the Court exactly what Sullivan told you?

A. This is what he told me.

Q. No; exactly what Sullivan told you as to his talk with Newman.

A. Well, I am going to tell you: That he came to New York, and so far as my memory runs, Sullivan, as I have already stated
942 here, did not give me very much information. In fact, he always seemed afraid to tell me the truth about the thing; and I do not know even at this time as to whether Sullivan saw Newman or Easterday saw Newman; but my best opinion and belief is that Easterday saw Newman, made his arrangements with Newman, and made a date to see Cohen and Arnstein, and that Sullivan, if present at all, did not take any part in it. Because up to that time, as I have subsequently learned, Sullivan had no faith in the proposition—no faith in Newman's ability to obtain any stock, no faith in Easterday's statements about what Newman could do; and that after they had met—or Easterday had talked with Newman—or if Sullivan was with him, after they had talked with Newman, Easterday and Sullivan, according to Easterday and Sullivan, tossed a coin to decide who should see Arnstein and Cohen, and Sullivan was unlucky enough to win. Therefore Sullivan was elected to meet Cohen and Arnstein somewhere up on Broadway; I do not know enough about New York to even know where they were to meet him. Sullivan related that on the night that Williams was arrested, when we were in the Hotel Raleigh. When we went back—he further stated that when he came up here, up on Broadway, he met this man, and
943 Easterday was so nervous about the situation, that he could not keep out of it, and later butted into the conversation and monopolized it; and according to Sullivan, that although Sullivan had lost, and was to make the arrangements, that Easterday came into the conversation and took Cohen away from Sullivan on that night, October 11th 1919, and made the arrangements with Cohen himself. And that Easterday merely told Sullivan what he was to do to get those stocks; and as a result of that, Sullivan said that he came to Washington the night of the 13th of October 1919 and met Cohen and Arnstein in the Willard Hotel, Washington, D. C., and that Cohen, by himself, had all the dealings on that occasion with him; that Arnstein seemed to have nothing to do with it at that time; and that he, Cohen, went up to Sullivan & Company's office and opened an account, about which I knew, and about which I have testified at great length there, how it was opened and so forth. And then Sullivan went along to relate how the thing was done from time to time; and he related partially what he has stated here on the records, and what he has told me about the different ways of getting the stock. And I told him to come to New York, that I would come to New York, and that we would go to see the District

Attorney; that first, the best thing to do was to see some lawyer, and I suggested Mr. Hartman of Stanchfield & Levy's office, having had some dealings with them prior to that time. And Mr. Sullivan and Mr. Easterday went to see Mr. Hartman, and as a result of the advice that they got, and as a result of the written threats of the banks to sell out the stocks which we were carrying, all the stock was thrown on the market; and with all due respects to what all of them have to say, they could not prevent them; it was all thrown on the market on the 16th, 17th and 18th of November 1919. Sullivan told me, when he was in Washington, that he would quit the business for nothing; would give it to me; but I would not take it. We had a business that had a lot of money and a lot of stocks, that we did not know what to do with. We just got to that point that we did not know which way to quit—I have known Sullivan a long time, and I realized he must have been in an awful jam to have gotten into this position. He was never really interested in the stock business; I know he was interested with a man in Philadelphia; he seemed to have no real interest in it. So Sullivan and I intended to turn over all the stock to the District Attorney's office, and all the books. And Sullivan came back to New York, and after some argument, he got in touch with me, and I came here to persuade Easterday to turn over the whole shooting match to the District Attorney, and take our chances. But the blow off came—Sullivan came back to New York on the 18th with the express purpose of standing right here and taking him up to the District Attorney; and he deliberately left Washington and came right to New York, where he knew the District Attorney would probably be waiting for him, because he knew the thing was all over, and he walked right up here and gave himself up. But when he found—at that time he found Easterday had jumped out; had run sailing towards—he did not know where; but later we found Los Angeles, California. That the firm of Sullivan & Company was broke; did not have any finances; did not have any money in the banks, and if they did, they could not draw it, and there was no way to get him out, and he was kept locked up, thrown in jail. And on the 18th of November 1919 the firm of Sullivan & Company, with all of its assets, went to the wall, and its papers, books and everything of value were snatched out of the office at 10 Wall Street, either by Mr. Dooling's men and detectives, or it was left in such a state that people stole what they did not take. The furniture and fixtures, big things, desk, and partitions, were taken out by Mount & Robertson in January; they stood there. Little things, such as adding machine, check protector, and things that probably ran up, all told—typewriters and so forth—little chairs and desk, which would amount to \$1,000, if figured right, disappeared, and we have not any more idea where they are than Mr. Myers has here; but I think that the man next door, in 10 Wall Street, got it.

Q. Then as I understand it, it was not until about the middle of November 1919 that you knew that those securities which your firm had been handling, were stolen securities?

A. Until I absolutely knew; but I want to say that my mind—I have got too much intelligence to believe all this time that there was not something wrong; but I could not tell what it was; I did not know anything about the brokerage business; and Easterday would tell me that the firm was worth—and argued with me; but I could not get it through my head that we were doing apparently half a million dollars' business, almost like over night; I could not realize that anybody would give us anything for nothing, and I just simply did not know which way we were going. The thing only happened over a period of—you see, it started on the 15th, really rolling; it started rolling on the 15th.

Q. Of what?

A. Of October last; the loan was made on the 14th; and it broke about the 10th of November. The noise followed it up to the 18th; but really, the thing broke on the 10th. That was when
947 Williams was arrested. So you see it did not run a month; it only ran about three weeks. But I never visited New York from October 14th up to these present visits that I made here, at the suggestion of Mr. Myers, except once; and on the 28th day of October I came to New York on a flying trip, and went before the Consolidated Stock Exchange to recommend an application of a member, or a man that I knew, and I was not in New York that night; I came right in and went right out. In fact, I did not see anything around the office to indicate anything out of the ordinary. Sullivan was away at that time, and Easterday was not there.

Q. You knew that Mr. Easterday had had a very bad record?

A. That was a thing that—I knew that Easterday was in a way, I will say, unbalanced. He was crazy over his ideas of what he could do and what he could not do,—what he thought he could do in the stock business: That he could do almost anything over night; that he had the biggest ideas in the world; and he imbibed them into other people, and got us to thinking that a few thousand dollars could be run into fabulous sums; that what he did not know about the brokerage business, could not be known. And I knew that his statements were about 90 per cent exaggerations; and I knew his record.

948 Q. You mean his criminal record?

A. And his criminal record is as follows—it might as well go into this record, so that it will be once there for all and all; because there has been a lot of talk about it. Easterday has never been convicted of a crime. His record consists of as follows: He was connected with the firm of W. W. Easterday & Company, which firm was thrown into bankruptcy, and its partners, Kinear, Wheeler and Easterday were indicted, with one of their employees named Vause, for conspiracy, conducting a bucket shop. I appeared as attorney, and was satisfied then, and am now, that there was nothing to the case, so far as prosecution was concerned. That case has hung fire for three years, and there has nothing come of it. A case that I know of, I read in the papers, and later investigated, that Easterday killed a man, driving a car from Washington to Baltimore—or from Baltimore on his way to Washington I should say. I know that

Easterday is an expert with an automobile, and, under ordinary circumstances, I know him—and I think I even taught him to drive a car—so far as I remember now—he worked for me; and I gave him credit of not being guilty of any negligence. It so turned out later that he was not; and the case was nolle prossed. The man he
 949 killed was a drunk; he was walking along the road drunk and he tottered in front of the car when it was right near him, and Easterday took a 25 foot bank and turned his car over to prevent hitting the man. And I have been informed, and I partially believe, that Easterday was not even driving the car, but that he took the blame; because a young lady was driving the car, still he stood under an indictment—these are some of the things that make Easterday shine out to me as being a real man in some respects—he took an indictment for first degree murder, the form in Baltimore that they use, and stood up under that; and I am confident he was never even driving the car at the time; I am confident a woman was driving the car, and yet he grabbed the steering wheel and took a 25 foot bank. The next thing, in Baltimore he drew a check for three or \$400 to pay a hotel bill; that was on the 16th of November, if I remember correctly; and he left Baltimore for New York, and before he arrived in New York his firm of W. W. Easterday had been thrown into bankruptcy, and payment had been stopped on all of his checks. There is a Statute in Baltimore that made it a criminal offense for him to draw a check and not pay it, for a board bill, and he was indicted on that. Later that matter was settled up by Easterday paying.
 950 The next information that I have relative to any misconduct of Easterday, was, if I recall correctly, when he kited a check between the Greenwich National Bank, or the Greenwich Bank, and the Chatham & Phenix National Bank, for \$200. He deposited a draft of McNey & Company in the Chatham & Phenix National Bank at 149th Street, and the same day drew a check on McNey & Company, having a power of attorney to sign, against that bank, for \$200, and obtained the \$200. The kite of the \$3,000 originally deposited went on for a few days, and finally broke, and he was indicted on the \$200. It turned out later that it was not a criminal offense; that the whole transaction might possibly be worked into a criminal case, but that the case itself was not a criminal case; and, in open Court, the 200 dollar matter was nolle prossed, dismissed, by Judge McIntyre, but that a subsequent indictment was drawn on him in some way, by Assistant District Attorney Dooling—I do not know how he got it—charging him with the larceny of some \$1,400, which amount was drawn out of the bank, and which amount the bank was supposed to have lost. And Sullivan & Company paid the 1,490 odd dollars some time in May or June of last year; I advanced the money for Sullivan & Company myself to pay it, and put it up, and they dismissed it. Now, so far as I know, that is the sum total of Easterday's criminal record.

951 Q. And Sullivan has no criminal record?

A. Sullivan has never paid a five dollar fine for speeding, or disorderly conduct, or anything else. I have known him for

twelve or fifteen years; he has lived within a square of Police Headquarters in Washington, and he conducted a restaurant which was proper, in the neighborhood of Washington which is the toughest that we have, and his record is, without question, as good as anybody's that I have ever had any dealings with.

Q. And you never had any trouble?

A. I am a member of the Bar of the District of Columbia, and it speaks for itself. I was never accused of anything improper in my life.

Q. Did Sullivan tell you all of the facts as to his relations with Newman in this matter?

A. Sullivan told me—I asked him about Randolph Newman—

Q. (Interrupting) When did you ask him?

A. After I had heard that there were drafts and checks payable to Newman; I asked him why Newman got any money, and why he did not ask me before he paid Newman any money. And he said Well, knowing that you did not have any use for Randy—he called him Randy—I said “What did you pay him money for with-
952 out consulting me?” He said “Well, the poor beggar was in a pinch, and he owed some broker up here in the market; but he had pulled off some deal that I do not believe was square, and they were threatening to send him to jail, and I advanced him some money. I figured that morally we owed him something, and if Easterday did not make any deal with him”—and I wish you would go into that point with Easterday, because I do not know whether Easterday made any deal with him. He said “I advanced him some money from time to time, because he came in the place and he actually cried”—he said he sat down there and cried in our office—
“and I felt sorry for him and advanced him some money from time to time.” He never, however, told me what it was; but in examining these books, as much as I could here the other day, I find that Randolph Newman must have gotten between five and \$6,000 between October 15th and November 10th, 1919.

Q. Did Easterday ever tell you whether he had introduced Arnstein and Cohen to Sullivan?

A. No; I just told you he did not do that.

Q. Well, did Easterday ever tell you that he met Arnstein and Cohen through Newman?

A. Yes—that he met Arnstein and Cohen through that telephone conversation from Newman, coming to Newman in New York, and Newman making an engagement for them to meet someone.

953 Q. Now let us finish these checks first: No. 1102, \$950, H. M. Bockman & Company.

A. That is O. K.

Q. No. 1103, Cash, \$100.

A. Ask Easterday. That is one of those commission accounts to Danny Jacobs that I do not believe is square.

Q. No. 1104, H. Stadler.

A. Apparently paid him on account, repaid him.

Q. 1105, cash, \$5,000, Charles Enright, New York account No. 7.

A. That was paid to Enright, to Cohen, on account.

Q. By Sullivan?

A. Yes.

Q. You only know that from Sullivan?

A. All the money was paid to those people by Sullivan.

Q. When you say "those people" you mean Cohen?

A. When I say Wall, Enright or Steele, I mean Cohen; because Sullivan has impressed upon me that he had all of his dealings with Cohen; and he has told you how the relations between Cohen and Arndstein were. He always handed the money to Cohen.

Q. No. 1106, \$150.

A. Ask Easterday. "\$50 cash to Hill. \$50 petty cash. \$50 commission." I do not know anything about it.

Q. Who is Hill? Is that Easterday?

A. That is Easterday.

954 Q. Do you know why he assumed the name of Hill?

A. Well, I will tell you why he assumed the name Hill: Easterday's record that I just explained to you here a few minutes ago, had made it such that we thought that only to the public, not to the customers in general, but just to the public, that Easterday was connected with Sullivan or in Sullivan & Company's office or working for us, would not do us any good in a business way; and he used that name for business purposes. And so far as I know, he never did anything under that name, except use it on his account in Sullivan & Company. I never knew of him using it except to put it on the account.

Q. No. 1107, \$500, L. A. Spies.

A. That is a Washington account; that is all right.

Q. 1108, canceled. 1109, canceled. 1110, Hunt, Ellis & Company, \$3,240.

A. That is what we paid to take over an account.

Q. Is that a bona fide transaction?

A. That is a bona fide transaction.

Q. 1111, Walter Plain, \$560.

A. Yes; that is bought 20 shares of Mexican Petroleum.

Q. No. 1112, \$3960, Falk Brothers.

A. Bought 40 shares of Mex. Pet.

Q. 1113, \$805, Falk Brothers.

A. That is all right.

955 Q. Those last four accounts, 1110, '11, '12, and '13, Sullivan & Company actually got the stock?

A. Yes sir.

Q. And sold it in the regular course of business?

A. Yes; that is regular course of business.

Q. 1114, cash \$200.

A. I do not know; ask Easterday.

Q. No. 1115, Hunt, Ellis & Company, \$1,165.

A. That is all right.

Q. 1116, cash, \$400.

A. Ask Easterday.

Q. 1117, \$17.50.

A. Yes; that is all right.

Q. Then I notice deposits on October 30th, Secor, Weil, \$7,500; what does that mean?

A. Those are checks we got from them.

Q. Those are all right?

A. Yes sir.

Q. Bona fide in every way?

A. Yes sir.

Q. 1118, Miss Wilen, \$150.

A. Ask Easterday.

Q. No. 1119, H. Stadler, \$170.50.

A. Apparently all right.

Q. 1120, cash, \$700.

A. Salaries. It looks a little heavy to me.

Q. 1121, cash, \$110.

A. I think that is all right.

Q. 1122, R. M. Newman, \$1,000.

A. Ask Easterday.

Q. 1123, Bankers Trust Company, \$86.11.

A. All right.

Q. 1124, cash, \$500.

956 A. I do not know anything about it; ask Easterday.

Q. 1125, cash, \$50.

A. I do not know anything about it; I was not here; ask Easterday.

Q. 1126, cash, \$200. It says "N. S. B."; that is you, isn't it?

A. Yes; that was a coat. You will find that salary entry. That is a coat for me. I told him to buy me a coat.

Q. How much was the coat?

A. \$100.

Q. Then that is all right?

A. That was all right.

Q. No. 1127, Bankers Trust Company, \$77.41; is that all right?

A. That is O. K.

Q. 1128, John P. Peel & Company, \$183.29.

A. Ask Easterday.

Q. It purports to be for rent of Mr. Easterday's apartment, doesn't it?

A. That is what it is.

Q. 1129, Chase National Bank, \$100.

A. Ask Easterday.

Q. 1130, Miss Murray, \$150.60.

A. That is O. K.

Q. 1131 is canceled. 1132, O'Brien, \$448.78.

A. Closed account in Washington.

Q. 1133, stock quotation, \$20.

A. O. K.

Q. 1134, Heim, \$45.

A. That is all right.

Q. 1135, Mott, \$440.

A. That is all right.

Q. 1136, Federal Reserve Bank, \$625.62.

957

A. Ask Easterday.

Q. 1137, George W. Liebmann.

A. O. K.

Q. 1138, Howell, \$14.50.

A. O. K.

Q. 1139, National City Bank, \$138.

A. Ask Easterday.

Q. 1140, cash, \$100.

A. Ask Easterday.

Q. 1141, Hanover National Bank, \$350.

A. Ask Easterday.

Q. 1142, Bockman, \$1,165.

A. O. K.

Q. 1143, Dunham, \$1,000.

A. All right.

Q. 1144, Levy Brothers, \$250.

A. All right.

Q. 1145, Cuatham & Phenix, \$650.

A. O. K.

Q. What is that about?

A. It is a draft, Washington, \$650, customer's account; that is

O. K.

Q. Is there anything irregular about this deposit of November 3rd, Secor, Weil, \$5,000?

A. Nothing.

Q. Or Seaboard National, \$2,500?

A. Nothing.

Q. Or Secor, Weil, \$2,375?

A. Not a thing.

Q. Levy Brothers, \$80?

A. Not a thing. All deposited.

Q. 1146, Hirsch, \$39.75.

A. That is all right.

Q. 1147, Welles, \$3,100.

A. That is all right.

Q. 1148, National City, \$125.

A. No. 603 you will have to ask Easterday. The others are O. K.

Q. 1149, Federal Reserve, \$125.

A. Ask Easterday.

Q. 1150, Hanover National Bank, \$100.

A. Ask Easterday.

958 Q. 1151, Bank of America, \$384.71.

A. Ask Easterday.

Q. 1152, Chase National, \$603.

A. The same.

Q. 1153, cash, \$100.

A. Ask Easterday.

Q. 1154, Secor, Weil, \$398.

A. All right.

Q. 1155, cash, \$100.

A. Ask Easterday.

Q. 1156, Consolidated Clearing House, \$2,352.04.

A. O. K.

Q. No. 1157, Hunt, Ellis & Company, \$1,160.

A. O. K.

Q. 1158, cash, \$300.

A. Well, we bought Tax stamps; but you had better ask Easterday about that.

Q. 1159, Chase National Bank, \$457.51.

A. Ask Easterday.

Q. No. 1160, Hunt, Ellis & Company, \$3,315.

A. O. K.

Q. 1161, Howell, 400.

A. All right.

Q. 1162, Bockman, \$1,420.

A. O. K.

Q. 1163, Van Buren, \$1,160.

A. O. K.

Q. 1164, Howell, \$420.

A. O. K.

Q. 1165, cash, \$200.

A. Ask Mr. Easterday.

Q. 1166, Hanover National Bank, \$168.73; that is irregular, isn't it?

A. I do not know about that.

Q. How do you explain these very heavy purchases of shares during the last week before the failure?

A. Well, some may have bought, and we just put it on the book as paid. We would pay for it in full. It states right on 959 there what the stock is. (Indicating.)

Q. Then you stopped using this check book Exhibit No. 2 of March 19th 1920, didn't you?

A. Yes sir.

Q. And you turned to the draft book?

A. No; we turned to another book of Sullivan & Company with the Bankers Trust. And the reason we did that is that they had, in the meantime, printed a book for Sullivan & Company, with our names on it.

Q. Starting with No. 2501? (Indicating.)

A. Yes sir.

Q. Was that the only reason you switched?

A. Yes sir, that is the only reason.

Q. This starts with check No. 2501, J. L. Marks, \$32; is that bona fide?

A. I do not know anything about that.

Q. Check No. 2502 is canceled. 2503 was canceled. Is that right?

A. Yes, apparently.

Q. 2504 is Marcus Heim, \$15.

A. O. K.

Q. 2505 was Marcus Heim, \$6.25.

A. All right.

Q. November 7th, Marcus Heim, \$50.

A. O. K.

Q. 2507 was Krinski, \$155.

A. O. K.

Q. 2508, Federal Reserve Bank, \$130.15.

A. Ask Easterday about it.

Q. 2509, bearer, \$1,000.

A. You had better put Randolph Newman's name I guess on that, and Easterday's also.

960 Q. In whose handwriting is that stub entry?

A. "Bearer" in the handwriting of Browder. And "Attorney fees," I do not know who that is written in by; it looks something like Jacobs'.

Q. 2510, Chase National Bank, \$122.50.

A. O. K.

Q. 2511, Bank of America, \$115.

A. It looks like it is all right.

Q. 2512, American Exchange National Bank, \$182.50.

A. Ask Mr. Easterday.

Q. 2513, Hanover National Bank, \$40.

A. Ask Mr. Easterday.

Q. 2514, Levy Brothers, \$67.50.

A. O. K.

Q. 2515, Mount & Robertson, \$2,000.

A. O. K.

Q. 2516, cash, \$550.

A. Check for \$550. The stub entry reads as follows: "Expense D. W. S., J. Hill, commission" and the check was cashed by Dan Jacobs, and he got the money in cash.

Q. No. 2517, cash, \$1,000; the stub reads: "Salary"; is that right?

A. Ask Easterday about it.

Q. In whose handwriting is the stub entry, the words "Cash account of salaries, \$1,000"?

A. I do not know whether it is Browder's or Jacobs'.

Q. Who got the money on the check, according to the check?

A. One of the runners, J. Santa Maria.

961 Q. Did he actually get it, do you know?

A. He actually got the money all right.

Q. Did he actually keep it?

A. That I do not know, who he turned the money over to.

Q. No. 2518, Bockman, \$1,560.

A. That is all right.

Q. 2519, Guaranty Trust Company, \$6.

A. Ask Easterday about that one.

Q. 2520, Morris Wampler, \$1,750.

A. That was in payment of Stanchfield & Levy, Mr. Hartman account, and was paid through Wampler; attorney fees.

Q. For the account of Easterday?

A. Yes sir.

Q. In whose handwriting are the words "J. Hill personal"?

A. I do not know.

Q. In whose handwriting are the words "Morris T. Wampler, \$1,750"?

A. I do not know.

Q. 2521 is canceled; is that right?

A. Yes sir.

Q. 2522, Perry, \$325.

A. That is all right.

Q. Who got that money?

A. Perry got it.

Q. It says there "Account of D. Sullivan," doesn't it? What is irregular about that transaction?

A. I do not know.

Q. What do you know about it?

A. I don't know anything; I was not in New York then.

962 Q. Who is Perry?

A. I don't know.

Q. Then how can you say it is all right?

A. I am only stating about—when I state whether it is regular, or whether it looks like irregular, on the face there is nothing on there to indicate that; I do not know anything about Easterday getting any money out of that.

Q. 2523, Eli Sheetz, \$1,500.

A. That was paid him back, 1,500 dollar loan. Let's see if he cashed it.

Q. When did he loan the money?

A. He loaned us money from time to time.

Q. Where does it appear on the books?

A. It does not appear on the books, because he loaned us the money, \$45,000.

Q. It does not appear on the books anywhere?

A. It does not appear on the books—

Q. (Interrupting.) Why was that?

A. Because we gave him a memorandum of the money we borrowed from him.

Q. What was there about that that it don't appear on the books like any other loan account?

A. We did not have any loan accounts appear on the books.

Q. He loaned you \$45,000?

A. Yes sir.

Q. Was there something irregular about that that you did not put it on the books?

A. Not a thing.

963 Q. Well, isn't it exceptional to borrow \$45,000 and have it nowhere appear on the books?

A. It don't appear on our books; we gave a note for it—or a memorandum. I guess we wrote a memorandum. I will tell you how we got it from him. He did not loan us the actual money; he loaned us \$16,000 in Liberty Bonds; he loaned us some \$10,000 in Sapulpa Refining stock; and he loaned me \$4,000 one time, for Sullivan & Company; and at another time he loaned us some nine or \$10,000; just loaned it to us from time to time.

Q. By check?

A. Yes, I guess he did give us checks, or cash; and he took a note—for instance, he just wired the bills up—

Q. (Interrupting.) I know; but here is a man that loaned your firm large sums of money, and so you mean to say that not a single entry appears in your ledger, or any other books, showing those loan transactions?

A. Well, I will tell you, Mr. Myers; there is one book gone. The ledger accounts that you have, the only books that you have here, the only books I have seen, indicate merely the way we were carrying our accounts with our customers. There is no account—I cannot find any account here—and I have looked all through these books—that would indicate our general—I do not find our expense accounts. I do not find any accounts at all, except customers' accounts. Now Browder had the information, as bookkeeper, and he kept the books. Browder and a man from Secor, Weil; we hired their head bookkeeper over there.

Q. What is his name?

A. I do not know what his name was. Easterday will know it.

Q. You hired him to keep your books?

A. Yes; we hired the bookkeeper, and he came from Secor, Weil; that is my information that he did.

Q. You mean that while he was working for Secor, Weil he was also employed by you?

A. Oh no; he was working for us exclusively. There are other books, but I cannot find them.

Q. Why was Eli Sheetz paid just before the crash?

A. On the 7th? Why, I imagine that Sullivan happened to be in Washington and told him that he would pay him, or something of that kind; he came down and probably just told him he would send him some money, in order to see—he was always making a howl for money; he wanted his money back—and he just paid him that \$1,500.

Q. No. 2524, Jerome Strickler, \$500.

A. That is that New York account.

Q. No. 2525, Newman, \$500. How was that check endorsed?

A. "R. M. Newman," and then "R. M. Newman, Special."

965 Q. Do you know anything about that?

A. It went through the Clearing House on the Lincoln Trust Company.

Q. 2526, November 8th, Federal Reserve Bank, \$2,893.

A. Ask Easterday.

Q. No. 2527, cash, \$900.

A. Cashed by one of the runners.

Q. What is his name?

A. J. Santa Maria.

Q. How did this stub read?

A. The stub reads "Petty cash, \$100, N. S. B., 100, 800." I do not know anything about it.

Q. You did not get that \$800?

A. No.

Q. What are the entries in shorthand (indicating)?

A. I do not know. Ask Easterday about it.

Q. No. 2528, First National Bank, \$120.50.

A. Ask Easterday.

Q. No. 2529, Hanover National Bank, \$400.

A. Ask Easterday about that one.

Q. No. 2530, Consolidated Clearing House, \$1,407.16.

A. All right.

Q. Sure of that?

A. Yes sir.

Q. In whose handwriting is that stub?

A. Danny Jacobs.'

Q. 2531, cash, \$50.

A. Ask Easterday; it is in his handwriting.

966 Q. 2532, Brewer, \$59.10.

A. That is all right.

Q. 2533, Howell, \$565.

A. That is all right.

Q. 2534, National City Bank, \$3,044.

A. \$2,864 was the amount of money paid to Mrs. Louisa Soyer, in payment of 25 shares of United States Rubber, Preferred, sold at 114%. I drew that draft through the Riggs National Bank and gave it to the lady myself. Now the balance of that check, it is up to Easterday to explain.

Q. Was Mrs. Soyer entitled to that money?

A. Oh yes; she is a customer. She gave me that stock, and I sold it for her.

Q. 2535, Liberty National Bank, \$700.

A. That seems to be all right.

Q. 2536, Bank of America, \$100.

A. It looks all right.

Q. 2537, Chase National Bank, \$179.45.

A. Ask Easterday.

Q. 2538, Federal Reserve Bank, \$424.52.

A. Ask Easterday about that.

Q. 2539, Hanover National Bank, \$500.

A. Ask Easterday about that.

Q. 2540, Levy Brothers, \$62.50.

A. That is O. K.

967 Q. 2541, McMasters, \$1,120.

A. That is all right.

Q. 2542, Levy Brothers, \$1,400.

A. Annapolis accused us of never having bought that stock. We had 1,000 shares; they accused us of never having bought that stock. We made a mistake; they ordered 500 and we bought 1,000 shares; and that stock is somewhere, just as sure as you are living; that stock is somewhere hanging around. That was in the office somewhere, but we cannot find it.

Q. No. 2543, McHie, \$910.

A. That is O. K.

Q. 2544, \$63.87.

- A. O. K.
- Q. 2445, cash, \$100.
- A. The same runner cashed it.
- Q. What is his name?
- A. Santa Maria. Ask Easterday about it.
- Q. 2546, Biddle & Company, \$13,585.
- A. That is O. K.
- Q. 2547, cash, \$1,000. What does that say in the stub?
- A. Santa Maria cashed it, the same boy; and it says on it "R. M. N., Randolph Newman, Attorney fees."
- Q. You do not know anything about that?
- A. I know nothing about that.
- Q. 2548, National City Bank, \$125.
- A. I do not know anything about it; ask Easterday about it.
- Q. 2549, cash, \$600?
- A. I would like to know about that. Ask Easterday.
- 968 Q. 2550, National Bank of Commerce, \$76.70.
- A. Ask Easterday.
- Q. 2551, Liberty National Bank, \$100.
- A. Ask Easterday.
- Q. 2552, Federal Reserve Bank, \$334.50.
- A. Ask Easterday.
- Q. 2553, Hanover National Bank, \$32.60.
- A. Ask Easterday.
- Q. 2554, Merchants National Bank, \$7.69.
- A. Ask Easterday.
- Q. 2555, State bank, \$15.
- A. Ask Easterday.
- Q. 2556, \$57.85.
- A. Ask Easterday.
- Q. 2557, Spingarn, \$240.
- A. O. K.
- Q. 2558, Greenwood, \$630.
- A. That is O. K.
- Q. 2559, Levy Brothers, \$150.
- A. That is O. K.
- Q. 2560, Bockman, \$2,240.
- A. O. K.
- Q. 2561, cash, \$5,000.
- A. George Wall.
- Q. In whose handwriting is that stub; two different handwritings, aren't they?
- A. No; that is in Browder's handwriting.
- Q. All of it?
- A. Yes sir.
- Q. 2562, Secor, Weil, \$55.13.
- A. That is all right.
- Q. 2563, Liberty National Bank, \$333.34.
- A. That is all right.
- Q. 2564, Merchants National Bank, \$12.60.
- A. Ask Easterday about that.

969 Q. 2565, Federal Reserve Bank, \$706.20.

A. Ask Easterday.

Q. 2566, Bank of America, \$1,074.

A. Ask Easterday.

Q. 2567, Manhattan Company, \$200.

A. Ask Easterday.

Q. 2568, Bankers Trust Company, \$4,000.

A. Reducing that loan of \$25,000.

Q. 2569, cash, \$100, cashed by Santa Maria.

A. Cashed by the same boy. Ask Easterday about that.

Q. 2570, cash, \$900; on the stub it says "Mark ups." The check was cashed by Jacobs; is that right?

A. Yes sir.

Q. 2571, Atlantic National Bank, \$175.

A. Ask Easterday.

Q. 2572, Greenwood, \$1,590.

A. That is all right.

Q. 2573, \$5,200.87.

A. That is all right.

Q. 2574, Consolidated, \$8,057.24.

A. O. K.

Q. 2575, Equitable Trust, \$88.86.

A. Ask Easterday.

Q. 2576, Liberty National Bank, \$43.

A. O. K.

Q. 2577, National City Bank, \$89.05.

A. Ask Easterday.

Q. 2578, Merchants National Bank, \$17.05.

A. Ask Easterday.

Q. 2579, Hanover National Bank, \$500.

A. Ask Easterday.

970 Q. 2580, Federal Reserve, \$205.11.

A. Ask Easterday.

Q. 2581, Bank of America, \$123.86.

A. Ask Easterday.

Q. 2582, Biddle & Company, \$4,000.

A. O. K.

Q. 2583, Bankers Trust Company, \$116.50.

A. O. K.

Q. 2584, Chase National, \$300.

A. O. K.

Q. 2585, Greenwood, \$810.

A. O. K.

Q. 2586, Levy Brothers, \$120.

A. O. K.

Q. 2587, Sartorius, \$25.50.

A. O. K.

Q. 2588, Snecker, \$700.

A. O. K.

Q. 2589, Kardis, \$28.35.

A. O. K.

- Q. 2590, Bertran, \$265.
 A. O. K.
 Q. 2591, Bockman, \$1,040.
 A. O. K.
 Q. 2592, Bockman, \$3,300.
 A. O. K.
 Q. 2593, Morris & Wilmarth, \$8,720.
 A. O. K.
 Q. 2594, Kardis, \$1,090.
 A. O. K.
 Q. 2595, Howell, \$2,550.
 A. O. K.
 Q. 2596, Howell, \$1,920.
 A. O. K.
 Q. 2597, Howell, \$145.
 A. O. K.
 Q. 2598, McGuire, \$1,010?
 A. O. K.
 Q. 2599, Bannister, \$1,020.
 A. O. K.
 Q. 2600, Irving National, \$400.
 A. Ask Easterday.
 Q. 2601, cash, \$1,000, charge to E. Steele, New York account
 No. 6, cashed by Santa Maria.
 971 A. That would appear in Steele's account, two 1,000 dol-
 lar checks.
 Q. The second one was cashed by whom?
 A. Morris Lairgna.
 Q. 2603, Mechanics & Metals, \$200.
 A. Ask Easterday.
 Q. 2604, National City, \$15.
 A. O. K.
 Q. 2605, Irving National, \$89.50.
 A. O. K.
 Q. 2606, Federal Reserve, \$374.78.
 A. Ask Easterday.
 Q. 2607, Chemical, \$123.18.
 A. Ask Easterday.
 Q. 2608, Hunt, Ellis & Company, \$1,175.
 A. O. K.
 Q. 2609, McGuire, \$1,090.
 A. O. K.
 Q. 2610, Valentine & Mott, \$750.
 A. All right.
 Q. 2611, Dugan, \$5,175.
 A. All right.
 Q. 2612, Levy, \$562.50.
 A. All right.
 Q. 2613, Welles, \$610.
 A. All right.

Q. 2614, Welles, \$10,640.

A. All right.

Q. 2615, Sheridan, \$243.75.

A. All right.

Q. 2616, cash, E. Steele, New York account, 1,000 dollar check cashed by Danny Jacobs.

A. Now you see there is one of those \$1,000.

Q. One of what thousand dollars?

A. One of those 1,000 dollar checks; in check No. 2601, \$1,000, and check No. 2616, drawn the same date, for \$1,000, was posted together in Steele's account *was* \$2,000.

972 Q. What does that all mean?

A. There were three checks drawn to salaries, which I told you to ask Easterday about; because it looks too heavy.

Q. Then what you mean is there were three checks drawn on the 14th, 2601, cash, \$1,000; 2602, cash, \$1,000; and 2616, cash, \$1,000?

A. Yes sir.

Q. And only \$2,000 is charged against Steele's account?

A. \$2,000 is charged against Steele's account.

Q. And \$1,000 is to be explained; is that it?

A. Yes sir.

Q. 2617, First National Bank, \$25.

A. All right.

Q. 2618, Hanover National Bank, \$46.92.

A. Easterday can explain that.

Q. 2619, American Exchange, \$6.76.

A. Ask Easterday about that.

Q. 2620, National City Bank, \$1,000.

A. Ask Easterday about that.

Q. When you say "Ask Easterday" you mean you know nothing about that?

A. I mean I know nothing about it.

Q. 2621, Federal Reserve, \$1,100.

A. That is all right.

Q. 2622, Cash, \$100.

A. Ask Easterday about that.

Q. Who got the check cashed?

A. Morris Lairgna.

Q. 2623 is canceled. 2624, Chase National, \$250.

973 A. I do not know anything about it; ask Easterday.

Q. 2625, cash, \$6,000; check cashed by Santa Maria and charged to account No. 7.

A. That is credited to the Enright account, \$6,000, on the 15th day of November 1919.

Q. 2626, Consolidated Clearing House, \$2,489.76.

A. All right.

Q. 2627, Bockman, \$26,530.

A. O. K.

Q. 2628, Howell, \$1,950.

A. All right.

Q. 2629, canceled. 2630, Schmidt & Deery, \$1,070.

A. All right.

Q. 2631, Welles, \$660.

A. All right.

Q. 2632, cash \$100.

A. Ask Easterday.

Q. 2633, Rosali, \$112.50.

A. All right.

Q. 2634, McGuire, \$3,900.

A. All right.

Q. 2635, National City, \$330.80.

A. Ask Easterday.

Q. 2636, Federal Reserve, \$178.63.

A. Ask Easterday.

Q. 2637, cash, \$500.

A. Ask Easterday.

Q. 2638, Chatham & Phenix, \$97.92.

A. All right.

Q. 2638, not used. 2640, not used. 2641, not used. 2642, Carpenter, \$3,908.79.

A. Now that check we gave out, but I understand that they did not use that check, because I understood there was some complication about it, and the account was not taken over. The 974 check was canceled, or stopped payment, or something.

Q. 2643 canceled. 2644, November 22nd, 1919, David F. Browder, \$611.

A. Ask John T. Dooling.

Q. What does that mean?

A. He paid the salaries.

Q. Browder did?

A. Mr. Dooling did. That is why I ask you to ask him about it. Mr. Dooling paid the salaries; he O. K.'d the salary check.

Q. Are these all the checks that were drawn in New York?

A. That is all the New York checks.

Q. Were there any checks drawn in Washington?

A. No; that is all the checks, except the Empire Trust Company, and all the checks of the Empire Trust Company were absolutely straight and legitimate; I had the signature there myself, and there was nothing ever put in there, the proceeds of any improperly obtained stock.

Q. Now take the Continental Trust Company check book, check No. 1001.

A. The Continental Trust Company book was first kept on the back of the Riggs National Bank book, and the checks were drawn as follows:

Check No. 1001 was for \$3,000, and it was to transfer money to the Riggs National Bank, from the Continental Trust Company; \$20,000 was sent to New York, and \$5,000 was sent to New York, leaving a balance in there of \$17,500 then. Transferred 975 \$8,000 to the Riggs National; transferred \$7,000 to New York, sent to New York. We did not used to keep any money

in Washington; sent it all up here. I paid the Commercial National Bank \$10,500 in check 1006. No. 1007 was \$3,000 to New York, the balance of the money checked out and went to New York, leaving a small balance there. That is all in that. Riggs National Bank, \$4,500 transferred to New York, No. 1001.

No. 1002 is a payment of draft on account, \$536.59.

No. 1003, paid check on the Empire, W. D., loaned by check; that came back and we paid that. That is O. K.

No. 1004, R. M. Monahan, was a loan; we paid that.

No. 1005 was Capitol Press Bureau, advertising, \$100.

No. 1006, H. C. Argent, \$50, a customer.

No. 1007, customer; \$703.26.

No. 1008, C. & P. Telephone Company, \$32.50, paid on account. O. K.

No. 1009, \$750 was expenses on the new office, 1408-10 8th Street.

No. 1010, A. C. Saltman, \$20, room and board for Sullivan. O. K. To his account.

Transferred by No. 1010-A, \$20,000 to New York.

No. 1011, salaries and expenses of 1410 8th Street—we 976 were fitting up that office; \$500.

No. 1012, October 27th, \$150 expense for Easterday.

Check No. 1013, is a note, Sullivan & Company, for \$400; and \$50 cash to Bowles.

No. 1015, we sent \$3,000 to New York.

No. 1016, we sent \$7,500 to New York.

Check No. 1017, Hodson, papering and repairing office, 8th Street.

No. 1018, petty cash, to Drain, \$20 expenses; to Emmet, \$15; Goldenburg, furniture, \$370; and Leaman, labor, \$25; making a total of \$430.

No. 1019, P. Emmet, salary, \$30; American Express Company, \$25.50; N. S. B., three weeks' salary, \$300. Total, \$442.50.

No. 1020, George C. Shafer, is a florist bill, for flowers used for Sullivan & Company, \$27.50, for something we had some flowers there.

No. 1021 was to D. W. Sullivan, \$500; charged against Sullivan's account.

No. 1022 is expenses to and from New York; printing, and radiator covers for radiators, \$70 all told.

No. 1023 is payment of loan to Monahan, \$300.

No. 1020, Continental Trust Company, transfer balance 977 from Riggs to Continental, \$4,415.

No. 1024, November 7th, change. I gave somebody \$200 and deposited the \$200, and then drew out the \$200. In other words, I remember that transaction, I remember that a man paid a 200 dollar check, but he did not have the change for it, so I gave him \$200 and drew back the \$200. The books will show it.

No. 1025, November 10th, to something, \$80. Some kind of expense; that is fitting up that 8th Street office: To Leaman, sign painter, \$25; Emmet, salary, \$30; and to petty cash, \$15. That check was given to Emmet when he was over at the 8th Street office, to pay the expenses.

Check No. 1026, November 10th, Sullivan & Company, transferred to New York, \$8,000.

No. 1027, to P. D. Emmet, as per list of repairs, 1408-10 8th Street, \$80.83. That ends that book.

Starting with check No. 1500, November 12th, \$3,000, reducing the loan of \$28,000 with the Commercial National Bank, to a loan of \$25,000. George J. Easterday, for 100 shares of Miller Control stock, \$1,500.

Q. Who is George J. Easterday?

A. He is an uncle of Wiland W. Easterday; but that was a straight and legitimate transaction, because we bought 100 shares of Miller Control; we got that stock; you knew that, didn't you?

Q. Where is the stock?

A. It is in the Frederick office; it is listed in the assets.

Q. What do you mean? We have not got possession of it, have we?

A. Yes you have; the Receiver has got that.

Q. What Receiver?

A. Of Sullivan & Company.

Q. Has he got possession of it?

A. It is listed on our list of Receiverships. If he has done his business he has got it. We listed it and told him just where it was.

Q. What is that stock; is it quoted on the Stock Exchange?

A. No; it is a local stock.

Q. Well, is that stock any good?

A. Sure; it is worth \$1,000.

Q. You paid \$1,500 for it?

A. We paid \$1,500, and we sold it for \$1,500, but they got up there—on the 14th or 15th, and did not get up there until the 16th or 17th or 18th, whatever date it was, and the man got scared and would not take it.

Q. How much is that worth to-day?

A. It is worth \$1,000 or maybe \$1,500.

Q. That does not sound regular to me; it sounds phoney. Who has possession of that stock?

A. The Marshal in Frederick attached all of our possessions up there.

979 Q. What Marshal?

A. The Constable in Frederick; and among other things, our manager turned over to him, the bank, those 100 shares of Miller Control stock.

Q. Under what process did the Constable take possession?

A. He just came in and attached it for the salaries of the people we employed, although we asked them not to take any further action; and they have not taken any further action. That was listed and originally put in our assets.

Q. It does not sound right to me.

A. I do not know whether it is worth that. I am telling you the best of my memory, it is worth more than \$1,000. It may be worth \$1,500; maybe worth \$1,800; maybe worth \$2,000; but I say it cost us \$1,500, and we had sold it to the man up there for \$1,500.

Q. Who bought it?

A. We sold it to a man in Frederick, one of our customers; I do not know his name.

Q. What is his name?

A. I do not know just what his name is; I probably can—he is a man living out of Frederick a little ways; it is Walkersville. That is all right; I know it is good.

Q. All right; we will pass that. What is the next one?

A. 1502, Sullivan & Company, salaries, \$2,000. There is something wrong about that check.

980 Q. Whose handwriting is that?

A. That is mine.

Q. What is wrong about it?

A. Well, I never paid any salaries, \$2,000.

Q. Well, you made the entry \$2,000?

A. What is that; stationery or salaries? (Indicating.)

Q. It is salaries there.

A. It is marked on here salaries; but that is a payment of expenses; papering, painting. I carried all those people at 8th Street under expenses. We were opening the 8th Street office, and we expected to go into it about the middle of October 1919, and I had it papered, painted throughout, electric fixtures, partition put in, and the office equipped, and I carried that under salaries.

Q. Where is the check? Who actually got the money?

A. Well, that was cashed, salaries; that was paid out by this man, Emmet.

Q. Who was Emmet?

A. He was manager of the work; there was a lot of work done over there.

Q. Well, did you get the cash for that?

A. No indeed; I never saw it. He gave me a list of what he did with it.

Q. Where is the list?

A. The list is in the office somewhere.

Q. Is there any record in any of the books showing these items?

981 A. Yes; a memorandum. That is a memorandum I carried over to the office there, in that box.

Q. Whose handwriting is that entry in, No. 1501?

A. That is Mike Drain's handwriting.

Q. How is it Mike Drain drew one check on November 14th and you drew the other?

A. Well, he happened to draw that check up; but he had no power to sign it; I signed that check. He happened to draw that check—I will tell you how I did. We attached one of those drafts to it, he would not take that with Easterday's name on it; so we drew a draft.

Q. Did you get any part of that \$2,000?

A. No.

Q. Are those the only two checks?

A. Yes; that is all.

Q. Three checks?

A. That is the end of it; we never drew any more on the other Riggs National Bank check book.

Q. What I cannot understand is this: That you had one check paid on the Riggs, which—

A. (Interrupting.) No; here it is. He printed that, Sullivan & Company, our own personal checks. We had a check book made up for Sullivan & Company you see, and we never drew any checks—I never drew any checks in Washington after the 14th—I think the 14th was the last time I drew any checks. I quit drawing 982 checks. I heard rumbling, and I quit. We never heard anything about that after that. This was to pay expenses.

Q. Well, it was before the 14th of November that Mr. Sullivan told you all about Cohen and Arnstein?

A. That was on the 10th of November.

Q. Well then, you drew out a lot of money after that, didn't you?

A. No; we only drew one check this \$3,000 is payable to reducing the loan, you see. That is reducing the loan.

Q. What is this \$7,500, check No. 1016, Wall account; is that entered on the books; transferred to New York?

A. Yes.

Q. Now Mr. Bowles, tell the Court what banking transactions you had in Washington, in reference to loans. That is to say, the various banks and the order in which the accounts were opened, or the transactions had. What we want to find out is, with what banks in Washington you negotiated any of these securities stolen by Arnstein and Cohen.

A. You do not want any of our banking transactions prior to October 14th, do you?

Q. No.

A. On October 14th 1919, Sullivan opened an account with the Riggs National Bank, in his own personal name. He secured a loan of \$20,000, and put up as collateral 200 shares of At- 983 lantic Gulf & West Indies, and 300 shares of St. Louis & San Francisco Railroad stock.

Q. Were those stolen securities?

A. Those were securities he got from Arnstein on the 14th of October 1919. That account was later transferred to Sullivan & Company, and the balance of Sullivan credited to Sullivan & Company on the 21st day of October 1919. On the 27th day of October I secured a loan at the Riggs National Bank of \$25,000, in the name of Sullivan & Company, putting up 200 shares of Ohio Cities Gas, 100 shares of Studebaker, and 100 shares of Republic Iron & Steel. That is all of the loans with the Riggs National Bank, dealing at all with any of those securities, or with any loans of Sullivan & Company. There was a balance in the Riggs National Bank which was charged against this loan after November 18th, 1919. The next transaction was with the Commercial National Bank—

Q. (Interrupting.) Before you pass to the next bank; the first one was the Riggs National Bank; is that right?

A. Yes sir.

Q. Was that loan obtained by giving anything extra to the bank?

A. Not a thing.

Q. Was anything extra given to any bank?

A. Not a thing.

984 Q. No extra interest?

A. No sir; there was none, with the possible exception of the National Savings & Trust Company—

Q. (Interrupting.) No gratuity of any kind?

A. (Continuing:) About which loan I have no knowledge.

Q. Go ahead.

A. The Commercial National Bank, on October 15th 1919, 28,000 dollar loan, for which securities, 200 shares of Atlantic Gulf & West Indies, was pledged, and which loan was reduced by the payment of the \$3,000 about which I have testified on the checks; leaving that loan \$25,000. There was a further loan secured from them of \$50,000 on November 7th, 8th, or 9th, I do not just recall what date it was. The loan was made one day, and consummated another. That was in payment of stocks received through draft from the American National Bank, who obtained the stock through its correspondent in New York, from Secor, Weil & Company, who had obtained \$55,000 worth of the stock or more from the Seaboard National Bank, and added 100 shares of American Smelters Preferred to this loan that they took up from the Seaboard National; and I pledged that stock with the Commercial National Bank for a loan of \$60,000. The loan at the Commercial National Bank, including a small note there of Sullivan & Company, totaled \$76,500.

985 The Continental Trust Company made a loan of \$20,000 on 100 shares of Mexican Petroleum and 20 shares of Baldwin Locomotive. The loan was originally, as I stated, \$20,000, on which two or \$3,000 was paid; my recollection is that it was \$2,000 was paid, on or about the 14th of November 1919. There are no other loans of any stocks in Washington.

Q. All of those stocks about which you have just testified were stolen, were they not?

A. They are the stocks that were obtained from Cohen, to the accounts of Steele, Enright and Wall.

Q. And which you believe to be stolen securities?

A. Yes; which I have found out to be stolen securities, and which I have learned are stolen securities.

Q. With what other banks have you loans?

A. Sullivan & Company has a loan with the Franklin Trust Company of Philadelphia. The loan was originally \$115,000, and there are some \$200,000 worth of securities placed there. Later, the loan was reduced to \$95,000, and probably the balance of Sullivan & Company was charged against the loan when they sold out, or when they tried to sell out. There was an additional deposit of securities with this bank some time in the middle of November 1919. The

986 only other persons that we have securities with, are Secor, Weil & Company, who have probably 100 or \$125,000 worth of securities, against which there is a balance due Secor, Weil, according to them, of some \$43,000. The District Attorney of New

York secured, or obtained from the office of Sullivan & Company, some \$100,000 worth of securities on November 18th 1919. They also obtained, according to information and belief, \$2,000 worth of registered Bonds in a safe deposit box of Mr. Sullivan. That was the property of Nicholas Cohen, or Nick Cohen.

Q. Now, have you told us about all the securities which were pledged by your firm?

A. That is all the securities, not only pledged, but all the securities handled by our firm.

Q. And they were all stolen?

A. They were all obtained from Cohen and Arnstein, or obtained from Cohen by Sullivan in his relations with Cohen and Arnstein, and credited to the accounts of George Wall, Elmer E. Steele, and Charles Enright, and now known to us to be the stolen securities claimed by the bonding companies.

Q. What was the market value of all those securities?

A. The market value of all those securities was, to my best information and belief, somewhere in the neighborhood of \$590,000.

Q. And how much was realized from the banks by pledging them?

A. \$240,000, if my information is correct.

Q. How much did you, or the members of your firm, give to Cohen and Arnstein?

A. They gave them, out of that \$240,000, between 125 and \$135,000 I think.

Q. What has become of the balance?

A. The balance of the money was lost in Secor, Weil & Company. About \$16,000 went to the equipment of the 8th Street office; that cost \$16,000 to equip that office. And the indebtedness to customers' accounts of Sullivan & Company were paid off from time to time. There is a balance of \$26,000 in the Bankers Trust Company; and it comes pretty close to figuring it out there. That makes somewhere around \$127,000. I will say that I never had—when I quit Sullivan & Company on the 18th day of October 1919, my best recollection is that I had \$45. I quit with \$45. And I gave \$40 of that to an operator; paid his salary, to come to New York.

Q. How much did you draw out of the business from the very beginning, for yourself?

A. I never drew any out of the business; I always was putting in.

Q. Did you draw any out for any members of your family?

A. Not a dime; I never repaid any of my people any money. I never paid my father a dime. None of my people ever got any money from Sullivan & Company. I may have paid my sister, during June and July, when she loaned us some of her money, we may have returned it to her a couple of days after. Perhaps she may have loaned us \$300, and we may have given her back a few days after. But outside of that, none of the money was actually returned.

Q. Are you connected in any way with the Abe Lincoln Candy Company?

A. I am not.

Q. What became of all the furniture and fixtures of the Washington office?

A. The furniture and fixtures of the Washington office were seized by the Receiver for Gore & Company. I made an affidavit, and motion for the return of the goods; the office was completed, and they deliberately stripped the office and took the furniture and fixtures and sent them to a storage company, and they are now in the hands of that storage company.

Q. Well, who took them?

A. The Receiver, for Gore & Company.

Q. The Federal Receiver?

A. Yes sir.

Q. What is his name?

A. Frank Tyson.

Q. Did you tell him that they belonged to the creditors of Sullivan & Company?

A. I went into the office the morning that they took them—we had rented our office to Gore & Company, and they had moved
989 in and were doing business. And I went in the office the morning they took them and told them that all the fixtures therein belonged to Sullivan & Company; it was all Sullivan & Company's property; the electric fixtures and all. And I filed a motion in Court claiming them.

Q. Do you know the different names under which Easterday has traveled in his business career?

A. Emerson and Hill are the only names I know of.

Q. What is Emerson, the full name?

A. W. W. Emerson.

Q. And W. W. Hill?

A. J. W. Hill I think. I never went by any other name except my own.

Q. Were you ever to Arnstein's home in New York?

A. I never saw Arnstein in my life. I never was at his home. I do not know where he lives, or anything about it.

Q. When did you see Mr. Fallon last?

A. I saw Fallon on last Friday night, whatever date that was.

Q. Did you talk with him?

A. I talked with him.

Q. State what you said and what he said.

A. He just came over and said "How do you do? What are you doing up here?"

Q. Where was this; at Reisenweber's?

A. At Reisenweber's. And I said "Oh, nothing." I said "I got a subpoena, and I came up." And he said "Oh, I wanted to
990 see you about that." And I said "All right." He said "The whole gang will be in here in a few minutes." And I did not know who he meant by the whole gang. He said "The whole gang," or "The whole bunch," and I did not know who he meant by it; because I had never seen Fallon in New York; I had never seen any of the people who later came into the room with him, except McGee. I saw him in Washington. And I did not know who he

was talking about. I had no further conversation with Fallon, and had no further conversation with him at any time.

Q. Did you ever see Mr. Fallon before that?

A. Yes.

Q. Where?

A. In Washington.

Q. When?

A. On two occasions. Once I saw him at Easterday's home.

Q. When was that?

A. In January; I cannot tell you just the time.

Q. January this year?

A. Yes; 1920.

Q. When was the second time?

A. And I saw him about probably a month ago in Washington.

Q. Tell us what took place on that second visit about a month ago.

A. I was notified that Fallon was at the Shoreham Hotel, and wanted to see me. I would not go down to see him by myself—I just did not—never had much dealings with him; I did not like Fallon at all. So I called Wampler up, and Wampler and I went down. And he said he came down to see a man name Griffin; he said Major Griffin I think; but he wanted to discuss with us the question of going into bankruptcy. And we discussed it at some length. I was opposed to it, and Sullivan was in favor of it; and Fallon wanted the bankruptcy in New York, and Wampler and I said we would consider it. Later we started discussing; I asked him why he did not enter an appearance and go ahead and proceed in the interests of Sullivan & Company; that I did not see the earmarks of any interest that he had taken in Sullivan & Company's affairs. And further than that, it did not look like to me that they had made much headway; I thought they ought to get matters in better shape than they had. And we had little discussions. He told us about cases that he had represented people in, which at that time did not impress me much. Because big cases that he had won; and he had never lost a case; that he did not have but one man, I don't believe, he said, in jail; that Sullivan did not have a chance in the world of going to jail; that there was not any chance of Arnstein and Cohen ever admitting that they ever saw or knew Sullivan, or knew anything about him; and that it was a stand-up—that they would stand right up; that they could never pass Sullivan—I mean they never could pass from them to Sullivan; and if Sullivan stood up, they could never pass from Sullivan to them. He said "You don't know a thing in the world about this." He said "I have heard all about your connection about it." He said "You don't know a thing in the world about it, so you have got nothing to fear. You don't need to have anything to say about it, and stay out of New York." I asked him—kind of got into, and I asked him some of the preliminaries about this Arnstein and Cohen. I asked him about the confession that was supposed to have been made by one of those boys that had been arrested in the meanwhile. He said that did not amount to any-

thing; that they had never seen Arnstein, and he could win the case even in the face of that. I did not ask him where—if I asked him, I do not recall that he made any reply. My impression was at that time that Arnstein was right here in New York, standing up, taking in Broadway as usual. My impression from him at that time was that the only person that could be recognized by the boys was Cohen. That Cohen had done the business. The name of Furey figured in the conversation, but just exactly how he placed him in, I do not remember.

Q. This conversation was after the petition in bankruptcy 993 had been filed against Arnstein?

A. No.

Q. Before that?

A. Before.

Q. You cannot fix the time any more accurately?

A. I think it was Sunday of the week that you filed the petition. What day did you file the petition, do you recall? I stated to you the exact time.

Q. You mean the Sunday preceding?

A. Yes, the Sunday preceding that.

Q. Did Fallon say that Arnstein was in New York then?

A. He said he was not—I will change that. Just strike that out, before. I recall now—one thing brings back another—I now recall that Fallon said that Arnstein was not in New York City.

Q. Did he say where he was?

A. But said that he was in Buffalo.

Q. Did he say where?

A. No. If he did not say so, he led me to believe that they were in communication with him.

Q. Do you recall now everything that he said to you upon that last occasion at the Shoreham Hotel in Washington?

A. Well, the only part that I was particularly interested in, was Sullivan & Company matters; and he kept trying to talk about other people; Ginsberg. And what he said about Ginsberg was that Ginsberg had \$50,000 worth of Liberty Bonds, and impressed me 994 with the fact that he got them from Strong. If he did not get them from Strong, Strong was protecting him in his possession of them; whichever way it was; my impression was that Strong had something to do with it. But whether he was acting as attorney or whether he had sold the Bonds to Ginsberg, I do not remember which. Because that was not the main thing I was interested in. But those Bonds that he had were \$50,000 worth of the Binkowitz Bonds, and that there was some nervousness about holding them. That he would not have any client of his that had ever heard or seen about Binkowitz' Bonds, he would have him throw up his hands and run off; never touched the Binkowitz Bonds.

Q. Did Fallon say anything as to whether he knew about the Binkowitz murder?

A. Yes.

Q. What did he say?

A. He said that it was a horrible thing, the Binkowitz murder. He said "I saw that boy, and he was horribly murdered—mangled and cut up; and I would not have anything to do with any Bonds that had originated, or came through, or were connected with that matter in any way, shape, or form; and I would advise anybody that I represent, that they are in a bad way if they touch any of those Bonds."

Q. Well, did he say where he saw this boy?

995 A. He said he saw him after the murder.

Q. Did he say where?

A. No.

Q. Did he say how he came to view the body?

A. No.

Q. Well, didn't you ask him what he had to do with it?

A. No, I did not ask him; because as I said, I was particularly interested in Sullivan & Company's affairs, and when he got off on some other thing, cases that he handled, or cases that he was interested in, I brought him back to the point of Sullivan & Company.

Q. Well, didn't you know that Arnstein and Cohen were connected up with the Binkowitz murder?

A. No, I did not.

Q. Didn't you know that was all one transaction?

A. I did not.

Q. Well, did Fallon say whether it was or not?

A. He did not.

Q. Did Fallon say what Arnstein had to do with it?

A. No. He impressed me with the fact—he did not say it, but he impressed me with the fact that Arnstein had absolutely nothing to do with it, for the reason that he was particularly impressive on the fact that he did not want anybody that he had any relations with, to have anything to do with the Binkowitz Bonds.

Q. How did he know they were Binkowitz Bonds?

996 A. Well, he seemed to know the Binkowitz Bonds all right.

Q. Well, how? Did he say how?

A. No. He knew about that Strong had \$50,000—

Q. (Interrupting.) How did he know that?

A. Well, he did not tell us how, but he said he did know it.

Q. He said Strong had them?

A. Not Strong; but Ginsberg had them.

Q. Did he say what Strong had to do with that?

A. My impression was that—my real impression was that he got them through Strong. But after I heard that Strong was a lawyer, it may be that he was protecting him in it. I was not interested particularly in the fact of anybody else's business. We were in enough business scrapes of our own. But I was impressed with the fact that Ginsberg had \$50,000 worth of Liberty Bonds, the proceeds of the stuff stolen by Binkowitz; and that they were nervous—that Ginsberg was nervous about that, and that Strong's name, which I had never heard before—

Q. (Interrupting.) E. P. Strong?

A. He said Strong.

Q. Of Cleveland?

A. He said of Cleveland.

Q. And Ginsberg of Cleveland?

A. And Ginsberg of Cleveland; those were the two names. I never heard of Strong in my life—I never heard of them
997 from another living human being, until I heard them from Fallon.

Q. Have you told us all that you can recall having heard Fallon say on that occasion?

A. There was something said about Furey.

Q. Which Furey?

A. Furey had been arrested, one Furey; and there was something said about Furey; but he did not impress me—he impressed me that this Furey up here did not have anything to do with that man. I do not know why it impressed me; that he was outside, as far as this particular thing was concerned.

Q. There were two Fureys, were there not?

A. I gathered from the facts that there was another Furey. I did not know that; but I gathered that there was another Furey, his brother. And there was some impression about Toledo, Ohio and Canada; there was something relative to that; but not having my mind particularly interested in those matters, I got that on my mind. And I got on my mind another thing: That Kastel either had, or had been offered some kind of Binkowitz Bonds, and had run out, quick; would not fool with it. Now, what Fallon said about that was——

Q. (Interrupting.) Well, did Fallon on this or any other occasion discuss Fannie Brice?

A. Never mentioned her.

Q. Or Louis Bleet?

A. Never mentioned him.

998 Q. Or Phil. Dalton?

A. Never mentioned him.

Q. Or Maurice Dekker?

A. Never mentioned him.

Q. Or George S. Derr?

A. Never mentioned him.

Q. Or Charles Druckker?

A. Never heard of him.

Q. Or David Eschner?

A. Never heard of him.

Q. Or Paddy Goldberg?

A. No; I never heard of him.

Q. Or G. G. Hynson?

A. No; I did not hear it.

Q. Or Frank McGee?

A. No; never heard of it.

Q. Did he talk to you about Randolph Newman?

A. He just said that poor Randolph was—something about poor Randolph was scared to death; or something of that kind. But nothing about anything else.

Q. Did he talk about the Sugarman's?

A. Yes, he mentioned the Sugarman's.

Q. What did he say about them?

A. Just mentioned them to Dave; he said something to Dave about Sugarman.

Q. Did he talk about the Gondorfs?

A. I did not hear that name until I heard it up here. I did hear some other name mentioned; that suit that was being filed, some kind of a suit between Kastel and somebody.

Q. Goldberg & Heim?

A. I heard some echo of that; but it was not any discussion; it was just simply something about Kastel had done something about it.

999 Q. You recall Mr. Easterday testifying in Washington on Sunday, March 7th 1920?

A. Yes sir.

Q. Do you recall Mr. Easterday talking about \$2,000,000 of stolen securities?

A. I do.

Q. Had you ever heard of that before?

A. Yes.

Q. From whom?

A. I heard it from Easterday. I heard just what I heard Easterday say.

Q. And when?

A. Some time—I do not recall exactly—but some time after Easterday came back, I was up in the air, and I cussed him out and told him what I thought of him, and all. And he told me—and I told him what I thought of him getting Dave into this deal, and so forth. And he said well, he intended—that his intentions were to get that thing straightened out, and to retire those loans. And I said "That is out of the question now." But I said "Tell me something about it." He said "Well, those fellows could get you anything you wanted"—

Q. (Interrupting.) Meaning who?

A. Meaning Cohen and Arnstein. He said "They could get anything they wanted, from automobiles to stock. You could have anything you wanted." So the conversation went on, and he said they called him up on the phone and told him they could get \$2,000,000 or \$5,000,000 worth of stock; any amount we 1000 wanted, or anything we wanted. I said "What did you tell him?" He said "I talked to them about it, but the blow off came before." I said "You don't mean to tell me that you would have taken \$2,000,000 worth of it?" He said "Well, I was so excited at that time I did not know what I was doing." I said "Do you mean to say they said they could get you \$2,000,000 worth?" He said "Yes; they could get 5,000,000." I asked him how the conversation came about, and my impression was that he told me it was on the telephone. Now I remember he told me that before he ever saw Sullivan—but I never was impressed by the fact, as you get

it, that Sullivan had told Easterday that these people could get him two or \$5,000,000. I was impressed with the fact that on the day that Sullivan was in Washington—for instance, when Sullivan came down to see me on the 10th day of November 1919, between the time of the blow off, I understand that this fellow called up and wanted to make Sullivan take some more Bonds, and that he told Easterday that he could get \$2,000,000 worth or \$5,000,000 worth. That is what it impressed me as. But I do not think that Sullivan heard that; because I did not think that Easterday meant that Sullivan had told him that. If he said that, I do not remember what he said. I know he said something about it down in 1001 Washington.

Q. Now, did you hear Mr. Easterday, at the same time, testify about \$200,000 of Liberty Bonds in Jersey?

A. Yes, I heard him testify about that.

Q. Had you ever heard him talk about that before?

A. That is the first time I ever heard \$200,000 worth of Liberty Bonds mentioned. I heard Liberty Bonds—I heard him say—I heard Easterday say at this time, they could get Liberty Bonds; but I never heard Liberty Bonds mentioned before that time, of any particular sort.

Q. Did Mr. Easterday or Mr. Sullivan ever tell you about a taxicab drive with Cohen and Arnstein in New York?

A. Yes; Easterday told me about it.

Q. Well, what did he say?

A. Why, he only told me that—he said that Dave decided he was through with this business, and that those fellows wanted him to put a big deal over, and wanted to see him; and they insisted upon seeing him. And they did see him one night and they insisted that things were all straight. And Dave wanted to know how they got them, and that Arnstein was trying to explain to Dave—or started to explain to Easterday at least; and Cohen said “That is our part of the game; you shut up and don’t tell him anything more.”

1002 And that they rode out somewhere to a little place, and Dave told Cohen that he was through with the game entirely, and he was going to quit the whole business. Now, that is all that Easterday told me. I heard more; of course my mind would run naturally to what I heard—my mind would probably run slightly to what I heard him testify. But what I heard him say before he testified was what I said a few minutes ago. Dave had some little words with him.

Q. Have you told the Court now everything that you know about these stolen securities?

A. Yes, I have told them everything I can; I am not withholding any information to them; if there is anything else that I know, it is something that has not been directly called to my mind by some—

Q. Well, do you know where there are any securities of any kind, which have been stolen or hidden?

A. I absolutely have no knowledge of any securities, outside of those that I have testified about.

Q. Well, have you any information?

A. I have no information.

Q. Well, have you any suspicion?

A. Yes; I have got suspicions.

Q. Well, what suspicions have you?

A. Well, I have got suspicions that Cohen and Arnstein had stock before they left New York; because on that taxicab ride, I was impressed with the idea that they wanted him to take more, and Sullivan refused. And those stocks, if there were any that he wanted to give him, have never been accounted for. If he did not say he had them, he said he could get them. And if there was anything in the statement to Easterday by these people, why they must have them. And I have always been impressed by the fact that they have had to divide up, from what I gathered from Dave; that they had to divide up with somebody; and something impressed me about that fellow Furey that I cannot just explain in words. I always had the idea that he was the leader of the gang; I don't know why, but I have got it in my mind, and I don't think there is anything that will take it out.

Q. Did you ever meet Kastel?

A. I never did.

Q. Or the Gondorfs?

A. I never did. I never met any of those people, Mr. Myers. In fact, it was distinctly laid down between Newman and between these people, so I now understand, that under no circumstances to let me in on the game; why, I do not know. They would never impart any information to give it to me; I never had any information about it; never saw them in my life. When they were in Washington I was in New York, that one day. And when they were in New York, I was in Washington. So I have never been in the same city with them, after we started to do business with them, so far as I know.

Q. Did you ever hear of any of these parties about whom I have asked you today, Sullivan or Easterday or anybody else, having any safety deposit box?

A. No. I heard about that safe deposit box in the Equitable Trust Company; Dave told me about that. But I never heard of any safe deposit box of anybody else connected with it. I heard Sullivan say that one time in dealing with Arnstein and Cohen, or dealing with Cohen, he said to Cohen something about giving him a check. And Cohen said "No, I want the ready cash; I don't deal in anything but ready cash." He said "I always carry my stuff with me, and I want the cash. I don't believe in putting it in banks." Something about giving it to people, or home, or somebody—you could keep it better at home; or something impressed me that he could keep his stuff a little bit better at home than he could anywhere else. Dave told me afterwards that he is not polished. He said afterwards "That fellow is the one; he is not polished." He said "Arnstein is a kind of polished chap; there is the difference between

1005 them. Arnstein believes in banks, and he may have a safe deposit box, or not. But I don't think Cohen has."

Q. Now, have you told the Court everything you know about the Clark, Childs Company transactions?

A. I do not know of any transaction with Clark, Childs.

Q. You testified to it in Washington.

A. What about it?

Q. That a loan was obtained on a note which was endorsed by Mr. Sheetz.

A. Yes. What about Clark, Childs?

Q. Well, you were asked whether those were not the certificates of Clark, Childs & Company, Crucible shares.

A. Oh, I do not know anything about that. You asked me whether they were obtained, and somebody suggested it was one of those Crucible shares, and I said there was a share of Crucible stock that I later learned was negotiated, or hypothecated, for a loan at the National Savings & Trust Company, and that Mr. Sheetz guaranteed the endorsement on it, and that the endorsement I understood was Clark, Childs'. I did not know about that.

Q. Have you told everything that you can recall as to what Easterday told you about any of these transactions, about Arnstein or Cohen or Kastel or Fallon or anyone else?

A. The only information I got that is different from what I have told you, or could add to what I have told you, is what 1006 I have heard Easterday testify to there one day. I have not any other information that I got outside of that.

Q. Have you told us everything you knew about Mr. Newman?

A. Yes; I have told you that I had no dealings with Newman; that he would not have any dealings with me; that we did not travel on the same side of the Street.

Q. Did Mr. Wampler have anything to do with any of these transactions?

A. No sir.

Q. Or Mr. McNeil?

A. No; not that I know of. I know Wampler did not. I do not know what McNeil had to do with it. He and Easterday were so very close, I do not know what they did with each other. They seemed to be interested in this Abe Lincoln Candy Company together. In fact, I am on bad terms with McNeil; I did not like the way he treated us.

Q. Did Fallon ever discuss with you anything about the Glucks?

A. The Glucks? Those are the boys that were arrested?

Q. Yes.

A. He merely said that they made some statement, from what he had seen in the papers. But he did not believe all that the papers said about it but that Sullivan did not have anything to fear; that none of them had ever seen him. That is about all. He 1007 asked Dave, I believe, if he ever saw them, or knew who they were. And I asked him what they had to do with that deal, or something like that. Outside of that, nothing else.

Q. Is there anything about Goldberg & Heim that you think the Court ought to know?

A. The only thing that I know is that Fallon was interested, in Kastel's behalf, in some connection with them; and I got it in my head that he had passed stock through there, just like he could through us. I do not know why, but that is what I did.

Q. Did Mr. Sullivan ever tell you where he paid that money over to Cohen and Arnstein?

A. Mr. Myers, I would have my mind so impressed with what Sullivan testified to, that I do not believe that I could differentiate. I do not know that I have ever heard it from him direct. I know that he had paid him \$10,000 in Washington. I knew that he had paid them before I heard Sullivan testify. But outside of that, I think I would be impressed only with the fact of what Sullivan testified to.

Q. Well, did Sullivan ever tell you where he got those various securities; the cities?

A. Yes; he told me the same cities that he testified to: Washington, Boston, Philadelphia, and Baltimore; and that he never received any stock in the State of New York. He told me they wanted 1008 him to go to Chicago, afterwards. And he came to me and asked me, he wanted to know why those fellows did it like that for, if they had the stock—this was afterwards of course, after it had broken. He said "Well, if they had the stock why didn't they give it to me in New York?" I said "Well, do you know whether they got it in New York, or whether they got it some other place, or had it sent to them?" We never were able to figure.

Q. Did Mr. Drain ever know of any irregularities, so far as you know?

A. Never; he never suspected it.

Q. Or Browder?

A. Oh yes; so far as I know, he was not told. But I do not believe that Easterday could ever keep anything to himself; so I believe he told Browder. That is my belief; I do not know it as a fact. I heard Easterday say that he told Browder, when Browder asked him about it, that it was sufficient for him to know that they got it; that it was all right. You asked him about that when you were in Washington. But I know nothing else about it; I do not know if he ever told him anything else or not. That is what he said; and that is what he told you too.

Q. When did you first contemplate failure, or bankruptcy?

A. You mean to go into bankruptcy? We were forced into 1009 bankruptcy, so to speak, by the filing of an application for an accounting. And that was filed by an attorney named Costigan; and I had no use for him, and to prevent him ever having a Receiver appointed, that would be antagonistic to me, so I decided we might as well have a show down.

Q. Before Mr. Sullivan was arrested did you ever contemplate going into bankruptcy?

A. Yes.

Q. Before Sullivan's arrest?

A. Yes; I contemplated going into bankruptcy on the 10th day of October 1919.

Q. Why didn't you go?

A. I did not go into bankruptcy on that day because I borrowed from my father enough money to straighten out my customers—my immediate ones; and Easterday was going to do something to take the business off my hands and let me out.

Q. Well then, from that time on, down to the time that you really did go out of business, about the 18th of November 1919, were you fighting against bankruptcy?

A. No.

Q. Or what was the situation?

A. We were running easier than we ever were.

Q. What?

A. We were running easier from the 14th of October 1919.

Q. And previous to the 14th day of October 1919, you
1010 knew, did you not, that Mr. Easterday was helping himself very freely to the funds of the concern?

A. I did not know about those checks, Mr. Myers. I was not in New York—I mean, I was in New York on the 14th day of October, during the last few hours of the day. And I was in New York before the Clearing House on the 28th day of October; there to testify as to the good record of a certain member, or applicant. And outside of those two occasions I was not in New York from early October until I came up here at your invitation. And I have not any idea what took place, except as I got it over the wire; and our letters will show that I wrote repeated letters to find out something; I did not know what was going on; I did not know what he did; but I do know that the brokerage business, particularly as conducted by Easterday, called for the spending of money like flowing water, in different directions. He had to do a lot of things—

Q. (Interrupting.) But you knew that the firm was in very bad financial condition about the 10th of October 1919, didn't you?

A. Yes sir.

Q. Then why did you let the business go on under the direction of Easterday, knowing that it was Easterday that brought the business to the standpoint of wrecking it?

1011 A. Well, I put up enough money to clear it. When they came to New York they were going to do such wonderful things, and I had—this testimony has never shown yet—I never mentioned it before; I did not know that it was necessary; but I guess I might as well state it here—I formed a corporation, I did it myself, known as the Mary Pickford Candy Company. And I intended to operate that myself. Easterday nor Sullivan were not members of that corporation; I was through with that crowd. And I took in Wampler and someone else for officers, I have forgotten who they were, and had a Delaware corporation formed. And I intended to operate it, and get it running, as fast as I could, so that I could pay up all the obligations that I had relative to Sullivan & Company, and quit. And that kept me so busy fooling with that new company, that I had no time to notice this, so to speak—it was only a question

of three weeks. As I thought I was getting the Mary Pickford Company all lined up, but after I saw what had happened, how the thing had gone, I just lost heart in it; that is all; and never went through with it. And I was at a loss to know whether to go into bankruptcy; after the 18th day of November 1919 I was at a loss as to the effect that that would have on the criminal prosecution. I was at a 1012 loss to know where my position would be there.

Q. Yes; but you still have not answered the question: You knew, on October 10th 1919, that Easterday had wrecked this business, did you not?

A. Well, I knew that under his management, the business had been wrecked.

Q. And you knew he was a reckless man, did you not?

A. I came to realize that he did not know anything about the brokerage business.

Q. You knew he knew nothing about the brokerage business, and that he had spent the money of the concern recklessly, didn't you?

A. I knew that he was spending it recklessly.

Q. And instead of winding up the business then, you allowed Sullivan to make this deal with these two criminals, Arnstein and Cohen; isn't that a fact?

A. Well, Mr. Myers, literally speaking, that must be true; but—

Q. (Interrupting.) You knew the securities which Sullivan was bringing into the firm were undoubtedly obtained improperly by Sullivan?

A. Well, I did not know where the securities that Sullivan had were coming from.

Q. You knew from the entries in the books, and the withdrawals of cash, that Cohen and Arnstein were getting part of the proceeds—

A. (Interrupting.) I never saw a check, or any money of any kind, sort or description. The other day when I was here 1013 was the first peep I ever had of these books.

Q. But you knew before November 18th that Cohen and Arnstein were getting a share of the proceeds of these securities?

A. Knew it?

Q. Yes?

A. No sir.

Q. Weren't you informed by anybody?

A. No sir.

Q. You were not informed—

A. (Interrupting.) I will tell you that Sullivan testified the other day, and as a fact, they did not give me any information; and your little slips over there will show, the ones that I produced in that box—will show: "That is all right, Bowles; we know what we are doing; you do not know anything about the brokerage business; let it go; we will explain to you later." That is what those little slips will show, signed "Bill." And this and that.

Q. You do not mean to say that you would allow five or six or \$700,000 worth of securities to come into your office, and not find

out where they were coming from, or what was being done with the proceeds?

A. Mr. Myers, I never knew we had any such loans of securities. I assumed that all the loans were made in Washington, until about November—around the 7th or 8th of November 1919 I realized, and I found out frankly; but up to that time I believed all our business loans were made in Washington.

Q. The loans in Washington ran up to several hundred thousand dollars, didn't they?

A. Yes; but they came from Secor, Weil & Company, attached to drafts from Secor, Weil & Company, with the written statement on the wires "Money is so high in New York, make this loan in Washington." And I never would have gone to Jim Cahill, vice president of the Commercial National Bank, and put a loan over on him, if I had known that those stocks were part of the stocks that were mixed up in these thefts. Because Mr. Cahill would have done anything in the world for me, in reason, and I would never have done that to him. There is one thing I hate more than anything else, is to see Mr. Cahill now. I have not seen him since the day of this crash.

Q. Did Mr. Newman or Mr. Fallon ever advise you to stay out of New York?

A. Yes.

Q. Both of them?

A. Yes.

Q. On various occasions?

A. After Sullivan was arrested, yes. You know what I was going to do, don't you?

Q. What?

A. That day I was coming up here too, with Sullivan; I thought he was getting into a hole, and I ought to come up here and face it with him. I went over to surrender to the Washington police, and asked them if they wanted anything, as I was a partner of Sullivan & Company. They did not arrest me; but I went over there and put up a bond and informed them that I was going to New York. And O'Brien waited up here for me; but I got word from Dyer, and I got word from this one and that one and the other one, not to come to New York; that I was complicating matters more than smoothing them out. So I did not come to New York. Fallon afterwards, when he came down here, said, and advised me not to come up to New York; that I could not do any good. I wanted to see a certain lawyer here—

Q. (Interrupting.) Did you tell Fallon that you were going to make a clean breast of it, when you met him in Reisenweber's recently?

A. No.

Q. Did Sullivan?

A. I did not hear Sullivan tell him, but I know that he did. I know that Sullivan told him that he was going to tell the whole darn thing, and tell the truth about it.

Q. Now the testimony which Mr. Sullivan gave before Commis-

sioner Gilchrist on March 12th 1920, is that all true, to your best knowledge, information and belief?

A. I sat near Sullivan during that testimony, and so far as I know, the things in it that are stated as facts, which facts
1016 I know, are true; and those things stated by Sullivan that I did not know anything about, I believe Sullivan told the truth about it; I have not any idea that he did not tell the truth; therefore, I think that his entire testimony is true.

Q. Is there any other information that you have relative to the affairs of Sullivan & Company, or relative to the affairs of Nick Arnstein, that you have not told us about?

A. I have told you everything that I know about Sullivan & Company's business, that could in anyway enlighten an inquiry as to any dealings that we might have had in these bonds and stocks, and to the disposition of any money that we had in the business, and to any assets that either Sullivan or myself had. As far as I know, the whole case has been gone over as fully as I could do it. And another thing: I know that you people believe that I ought to have kept a closer hand on the business than I do. But it got away from me. On the 27th day of September 1919 the business got away from me, when Easterday pulled the wire out of Greenwood's office; and I never got a grasp on the business after that; I could not raise money fast enough to handle it.

NORMAN S. BOWLES.

(Adjourned sine die.)

Signed and sworn to before me this 7th day of April 1920.

Special Commissioner.

1017 In the Matter of NICHOLAS ARENSTEIN.

New York, April 19th, 1920—6.30 p. m.

(At the Office of S. S. Myers, #60 Wall Street, New York City.)

Present: Mr. Myers.

W. W. EASTERDAY, being first duly sworn by Commissioner Gilchrist, testified as follows:

Present: Mr. Myers.

Q. Mr. Easterday, you have been sworn in this proceeding, have you not?

A. I have.

Q. By Commissioner Gilchrist?

A. Yes sir.

Q. Will you please tell the Court everything that you know about the bankrupt in this proceeding, Nicholas Arnstein, from the very beginning; when you first met him; how you met him, and everything you know about him?

A. He was introduced to me by Mr. Sullivan, in a bar room on the left hand side going up Broadway, of the block next to the Breton Hall Hotel. I do not recall what block that was; what street that is. He was alone, and only stayed with me a few minutes. He left Mr. Sullivan and myself. He later returned with Nick Cohen and he said he had some stocks he wanted us to dispose of; or wanted Sullivan to dispose of; that he would not talk any business with either Sullivan or myself together. He had with him that night 100 shares of Crucible, which he showed to me. I left him then and went downtown, and was supposed to meet Mr. Sullivan 1018 down at the Astor Hotel later. I did meet him, and he said he worked out whereby they were going to deliver him \$100,000 worth of securities.

Q. Who is this that is talking now?

A. Sullivan told me that Cohen told him that he was going to deliver to him \$100,000 worth of securities the next day; but he would not do it in the State of New York; he would have to be in Washington; according to what Sullivan told me, he would have to pay him \$25,000 before he would get the securities in his hands. I told him that that was absolutely out of the question, so far as I could see; that Sullivan & Company was broke at that time.

Q. Well, who are you talking with now; Sullivan?

A. I am talking with Sullivan down at the Astor Hotel. Well, he said that Arnstein was going to call him in the morning and see what he could do with Cohen regarding the giving of those securities without money, the first loan. I believe it was the next day—I am not certain—Arnstein and Cohen and Sullivan went to Washington. I know it was on the midnight train.

Q. Now, before you go to Washington: Can you state the date of this meeting?

A. That meeting that we had was on some holiday.

Q. Columbus Day?

A. Columbus Day.

Q. Last year?

A. Yes sir.

Q. Now let me get this clear: Who knew Arnstein first; you or Sullivan?

A. Sullivan knew him first.

Q. Do you know how he became acquainted with him?

A. Yes sir.

Q. How?

1019 A. Newman called up on the Long Distance 'phone—
Q. (Interrupting.) Who is Newman?

A. Randolph M. Newman.

Q. A lawyer?

A. Yes sir; at 20 Broad Street. He put a call in for me at Sullivan & Company's office in Washington. When that call came in, I was not there, and the message was on my desk to call the New York operator when I came in. I was busy at the time, and Sullivan spoke first to Newman. And he said that he knew where we could get on our feet; where we could get some securities.

Q. Was the firm of Sullivan & Company bankrupt at that time?

A. Yes sir.

Q. Absolutely?

A. Yes sir.

Q. Can you say about how much it owed?

A. I will say offhand that it owed about \$10,000.

Q. And had no assets?

A. Oh yes; it had some assets. It had equities in loans. But they owed customers \$10,000, if they were sold out and bought in at the market at that time.

Q. Well, the firm was ready for the Bankruptcy Court?

A. Yes.

Q. And a large sum of money had been lost in trading?

A. Yes sir.

Q. The entire capital had been wiped out?

A. That is right.

Q. Did Newman know this?

A. He did.

Q. How did he know it? Did you tell him?

A. Well, Newman had been handling some matters for us.

Q. Well, did he know you were busted?

A. He did not know that we were absolutely broke, but he knew that we were in need of money.

Q. Because you told him?

1020 A. Sullivan had told him; so had I. Mr. Newman also knew that we were suspended from the Exchange during that time as when he called us.

Q. How did he know Arnstein? Do you know that?

A. I don't know that.

Q. How did he know Nick Cohen?

A. I don't know that.

Q. Is this the man Arnstein, whom you met? (Showing witness photograph, Exhibit 1 for identification of April 10th, 1920.)

A. That is it.

Q. That is Arnstein?

A. Yes sir.

Q. Is this a photograph of Cohen? (Showing witness photograph, Exhibit 2 for identification of April 10th, 1920.)

A. That is Cohen.

Q. Did you ever see this man, Benjamin H. Binkowitz? (Showing witness photograph.)

A. Never in my life.

Q. Now, tell us more fully everything that Newman knew about your affairs. Tell the Court everything that you remember that Newman knew about the affairs of Sullivan & Company at that time.

A. Newman knew that Sullivan & Company was weak, because they had failed to meet a Clearing House check. Bowles was out of New York, due to the sickness of his wife; Sullivan was in Philadelphia; I was in Washington. I telephoned Browder, when we could not meet the check on that day, and asked him to go to Newman and see if Newman could not raise the amount of the

check. And Newman gave his check in the amount due the Clearing House and presented it to the Consolidated Stock Exchange, through David Browder. But the check was returned, "Not sufficient funds." And it stood that way until Mr. Bowles put through a loan through Mr. McNeil, and had given the money to Mr. Sullivan; and he and I came to New York the night after we talked with Newman on the phone, and took up, or were supposed to take up 1021 Newman's draft, or check, whatever it was, which we did not get possession of. He made the Clearing House good, some three or \$4,000. I believe. Sullivan went over to see Newman when he came in, and he said he wanted us to meet a man up at the Bretton Hall that night. The man would be a tall man, with a dark mustache, sharp nose and would be dressed in a grey overcoat.

Q. Well, before you come to that, I want to find out all that Newman knew about your financial condition before you met Arnstein. I am trying to find out to what extent Newman knew that the firm of Sullivan & Company was in very bad financial straits.

A. Well, he knew that they did not have money; because we would not have sent down to him to borrow three or \$4,000. or use his check.

Q. Did he know about your trouble on the Consolidated Exchange?

A. That is what the trouble was; that is what he had given the money for.

— Did he know that Mr. Bowles and members of his family had lost a lot of money in the Sullivan & Company business?

A. I do not know if he knew that or not.

Q. Did he know that Mr. Sheetz had lost money in it?

A. He did not.

Q. Can you recall any other facts that he knew about the financial condition of Sullivan & Company at that time?

A. That is about all that I can recall that he knew about it.

Q. Now, you have told us all about that? Have you told us all that Newman said to you about Arnstein?

A. He said this fellow had a lot of bonds, maybe \$100,000 worth; and he said nothing about stocks. Liberty Bonds I believe he used; but he did not know exactly where he got the bonds from, or 1022 anything about the bonds; but that he knew that fellow would turn them over to us, for a consideration of money, way under the market price.

Q. Who was doing the talking; Newman?

A. Newman.

Q. Newman was telling you this?

A. He told it to Sullivan first, and that night when I went up and asked him the same thing.

Q. Then he told it to you as well as Sullivan?

A. Yes sir.

Q. That is what Newman was telling you about Arnstein?

A. He did not mention Arnstein?

Q. He did not mention any name?

A. He never mentioned any name.

Q. He afterwards turned out to be Arnstein?

A. Yes.

Q. You have told us everything now that Newman told you about Arnstein?

A. Everything he told me about Arnstein, except I believe about three or four weeks after that, he said this man's wife was a very prominent actress on the stage; and I tried to develop from him who he was; and he said that he would prefer that the man would tell himself; that he had promised not to say who the man was; that we were getting the stocks, and that was satisfactory.

Q. Do you say that Newman knew that you were going to arrange with Arnstein whereby you would get from Arnstein stolen securities?

A. We did not know at that time they were stolen.

Q. No; but Newman knew that they were stolen?

A. In my opinion, Newman knew they were stolen.

Q. What do you base that upon?

A. Because if they were so good, why would he extend us the courtesy? Why would not he take them himself, if the proposition was so good?

1023 Q. Well, what did Newman tell you the proposition was, or was to be?

A. Well, he said he did not know what the proposition was; but we could talk business with this man that we were to meet—both of us were not to meet him; only one of us was to meet him.

Q. Now, have you told us everything that took place between you and Arnstein the first time you met up at the Bretton Hall Hotel? Have you told us everything?

A. I did not meet him at Bretton Hall; I saw him at Bretton Hall though.

Q. You did not meet him there?

A. No.

Q. After you saw him at Bretton Hall, when did you meet him?

A. I met him in a bar room one block down from Bretton Hall, on the left hand side going uptown.

Q. You met him alone?

A. No.

Q. Who else was present?

A. With Sullivan. Sullivan introduced me to him.

Q. Did you overhear the conversation between Sullivan and Arnstein when they were speaking together in Bretton Hall?

A. No, I did not.

Q. Tell us everything, what was said by you, and what was said by Arnstein, and what was said by Sullivan, when you all three met in this bar room about a block away from Bretton Hall.

A. He said—

Q. (Interrupting.) Who is "he"?

A. Sullivan said to me: "I want you to meet an old friend of mine." He did not say any name; and he did not give my name. And Arnstein said "I saw you down at Bretton Hall a little while ago." I said "Yes, I was down there." And Sullivan said "You can

go ahead and talk in front of him; he is a real fellow." And Nick said "I don't care how real he is; I won't talk in front of any third party."

Q. That is Nick Arnstein?

1024 A. Yes. And at that I stepped over to the other end of the bar.

Q. And you talked with him alone?

A. No; not at that time.

Q. You let Sullivan talk with him alone?

A. I don't believe I ever talked with Nick Arnstein alone. I talked with the other fellow alone.

Q. Nick Cohen?

A. Cohen.

Q. Didn't you talk with Nick Arnstein at this time, in this cafe, alone?

A. I don't believe I talked with him alone. I talked with the other man, Cohen.

Q. Did you talk to Nick Arnstein in the presence of Sullivan?

A. We all talked there about race horses for a while.

Q. You did not talk about this business?

A. No; I never talked about that.

Q. Then this was the first meeting?

A. This was the first meeting.

Q. Can you fix the date?

A. That was Columbus Day night.

Q. When did you next see Arnstein?

A. In a park.

Q. When was that?

A. About a month after that.

Q. When did you next see Cohen after Columbus Day?

A. At the same time, at the park.

Q. Then you had not seen Arnstein or Cohen between Columbus Day and a month afterwards?

A. No sir.

Q. Now, let us get this right. Then you met them both on or about Columbus Day; is that right?

A. That is right.

Q. And first you spoke with Arnstein, and then you talked with Cohen?

A. Yes; Arnstein went out and brought Cohen back.

1025 Q. Well, did you speak to Cohen about securities?

A. Yes sir.

Q. What did you say to him and what did he say to you?

A. He told me he liked the looks of Sullivan. I said "Yes, Sullivan is an all right fellow."

Q. This is Cohen?

A. Yes. He said "Do you think you can put any loans through your banks?" I told him I believed it could be done. I said "Where are you getting these certificates from?" Well, he said "We are getting them from a safe place." Well, I said "What do you call a safe place?" Well, he said "I don't know you well enough to

tell you." I said "Have you got any certificates with you?" He said "Yes; I got one with me." I said "Let me see it." And he showed me 100 shares of Crucible, made out in the name I believe of Chism & Chapman. And I looked at the back of it, and it was their signature; negotiable certificate. I said "Are they all like this?" He said "I can get you anything you want. But," he said, "wait a minute; whom am I doing business with; you, or with Sullivan?" He said "Who is going to put these loans through?" I said "Well, I can't put them through; Sullivan will have to put them through." He said, "Well, I won't do any more talking to you."

Q. Well, did you have any talk with Arnstein along that line that night?

A. No; I did not have; I never had any talk with Arnstein along that line. He would not even talk in front of Arnstein. When he talked to Sullivan alone, Arnstein and I stood on the other side of the street. And he started to talk to me about race horses.

Q. That was that same night?

A. The same night.

Q. Then you have told us fully now, have you, what took 1026 place between you and Cohen?

A. Absolutely.

Q. And you did not meet either Arnstein or Cohen until a month later.

A. No; I never saw them again.

Q. Now, in the meantime, between October 12th, 1919, and about a month later, Sullivan had handled six or \$700,000 worth of stolen securities for Arnstein and Cohen; is that right?

A. Yes sir.

Q. Now, before we pass on, is it clear now that that appointment which you had with Arnstein and Cohen, was arranged by Newman?

A. Was arranged by Newman.

Q. No question about that, is there?

A. No question about that.

Q. Newman called you from New York on the Long Distance 'phone in Washington?

A. Yes.

Q. And asked you to come up here?

A. I was not there when he called.

Q. And he spoke with Sullivan?

A. He spoke with Sullivan first.

Q. And then Sullivan told you about it?

A. No; then he put me on the 'phone.

Q. And then you spoke with Newman?

A. Yes sir.

Q. Will you tell us, before we pass on, just what Newman said to you and what you said to Newman on the Long Distance 'phone?

A. He said: "I can arrange—I know a fellow who has got some bonds, about \$100,000 worth, that he will let you have." He did not say what kind of bonds, or how they were, or we did not know that they were stolen at that time; we did not know anything about them.

I said: "What are you talking about? You are crazy." He said "No; I mean it." He said "You and Sullivan come up here and I will introduce you to a fellow tomorrow morning." And to
1027 be frank with you, we had no more thought of getting anything from Newman than we had of jumping off the Washington Monument.

Q. When you got through talking with Arnstein and Cohen on October 12th last year, were you satisfied that you were then going to deal in stolen securities?

A. No sir; I was not satisfied that I was going to deal in stolen certificates.

Q. You were satisfied that the firm of Sullivan & Company was?

A. I understood, and it was talked over, that we wanted to get hold of \$25,000 worth of any securities that would hold Sullivan & Company over; and that is all that we had in mind to take.

Q. Yes; but you did take six or \$700,000 worth; isn't that right?

A. That is how much was given.

Q. And they were negotiated, and loaned against, by Mr. Sullivan personally?

A. Yes sir.

Q. Through banks?

A. Sullivan and Bowles.

Q. Yes; and you knew, between October 12th and this meeting in the park thirty days later, that between October 12th and the thirty days later, the firm of Sullivan & Company, or rather, Sullivan and Bowles, were dealing in six or \$700,000 worth of stolen securities?

A. I knew that they were dealing in six or \$700,000 worth of securities. They were not proven to me to be stolen at that time.

Q. Well, how soon after October 12th 1919 did you learn that those were stolen securities?

A. When Mr. Williams was arrested.

Q. When was that?

A. I just do not remember.

Q. Well you knew, didn't you, soon after October 12th, 1919, that you were getting hundreds of thousands of dollars of securities?
1028curities? You knew what was going on didn't you?

A. I did not know where they were coming from.

Q. Well, you knew they were coming from Arnstein and Cohen, didn't you?

A. I did not know the fellows' names.

Q. But you knew where they were coming from?

A. I did not know what source they were getting them from. They would never tell where they were getting them, or how they were getting them, or who they were getting them from.

Q. Who do you mean by "they"?

A. Those two fellows.

Q. You mean Arnstein and Cohen?

A. Yes.

Q. I know, but you knew that what Sullivan and Bowles were getting, you knew that those securities were off color, didn't you?

A. I did not know it altogether.

Q. When did you first find it out?

A. When Williams was arrested.

Q. You do not mean to say here that thirty days went by, and your firm was handling six or \$700,000 of securities, without your suspecting that there was "Something rotten in Denmark"?

A. Oh, I may have suspected, but I did not know.

Q. What did you suspect?

A. I don't know what I suspected; Lots of things went through my mind.

Q. Well, you must have had a strong suspicion. Now, what suspicions did you have?

A. Well, I don't know.

Q. Well, you knew that the whole transaction with Arnstein and Cohen was irregular, didn't you?

A. I did not know that, no.

Q. Well, you believed it to be, didn't you?

A. I did not think we were getting them from the right source.

Q. Well, you knew what the arrangements were with Arnstein and Cohen; how much they were to get, didn't you?

A. Through Mr. Sullivan; 25 per cent.

Q. You understood that right after Columbus Day, didn't you?

A. After the first loan.

Q. Yes; the first loan was about \$100,000?

A. \$100,000.

Q. You understood that out of the proceeds of the \$100,000 loan, Arnstein and Cohen were to get \$25,000?

A. That is right.

Q. And Sullivan & Company were to get \$75,000; is that right?

A. That is right; yes.

Q. That called to your attention the fact that the whole transaction was irregular, didn't it?

A. Well, I thought so, yes.

Q. Well, you knew that anyone who owned \$100,000 worth of securities, was not giving those securities away for 25 cents on the dollar, unless there was something irregular; isn't that so?

A. Well, it did not look exactly right.

Q. Well, you and Sullivan talked that over, and you must have had some discussion about it?

A. We did.

Q. Did you and Sullivan agree that the whole thing was irregular?

A. I can't remember that I asked Sullivan to find out where those stocks came from.

Q. Well, without knowing where they came from, the fact that Sullivan & Company was to get 75 per cent of the Securities, and the supposed owners were only to get 25 per cent, certainly brought up to your mind the thought and suggestion that the whole transaction was irregular; isn't that so?

A. Well, it did not look good to me.

Q. Now, from Columbus Day on, right down to the middle of November, you kept on running the New York office?

A. Well, running that office, and all the branches.

1030 Q. The next time you met Cohen and Arnstein was in a park; is that right?

A. That is right.

Q. In New York City?

A. Yes sir.

Q. The park up around Manhaftan Square?

A. Yes sir.

Q. How did you come to meet them at that time, and what took place?

A. An engagement was made—not with me but with Sullivan—to meet Nick Arnstein. That was after Mr. William's arrest. And Sullivan asked me to go along.

Q. And you had not met Arnstein and Cohen between Columbus Day and Williams' arrest?

A. I had not seen them, either one.

Q. What took place there at this meeting in that park?

A. We got in a taxicab.

Q. Who is "we"; Arnstein, Cohen, you and Sullivan?

A. Yes sir.

Q. Where did you get in that taxicab?

A. Well, they never got out of the taxicab.

Q. Where did they meet you?

A. Right in the center of the block, right above the park. We were in the park.

Q. They met you there by appointment?

A. They met us there by appointment.

Q. And you jumped into the taxicab, you and Sullivan?

A. That is right.

Q. State what was said, and what took place?

A. He asked us how came the slip; the certificate being transferred. And Sullivan told him that Nick had told him he could transfer any of them, or all of them; any of them were good transfers. And Cohen said "They were not good transfers, and they should not have been used that way at all." And Cohen said to Sullivan, "What in hell did you bring this fellow along for?"

Q. Meaning you?

A. Meaning me. He said "We told you to meet us alone."
1031 Well, he said "He is all right; you can talk before him."

And he said "Well, I am not going to talk before him. We will go to a roadhouse and we will sit down and talk." And we went out to some roadhouse out on Boston Post Road, or that road that leads to the Boston Post Road; and we sat down at a table—

Q. (Interrupting.) The four of you?

A. Yes. And then they opened the conversation again. Nick and I got up and Sullivan and Cohen stayed at the table for about ten minutes; and we went to the toilet. And he said to me at that time—

Q. (Interrupting.) Who said to you?

A. Nick.

Q. Which Nick?

A. Nick Arnstein said to me: "My God that was a terrible slip that was made."

Q. Referring to the Williams' transaction?

A. Yes. And I said I knew nothing about it until I saw the notice in the paper. In fact, I didn't even know that Williams had any stuff. The books don't show it, and we did not know it in the New York office; not a thing about it. He said, "It is a damn shame." He said "I got \$2,000,000 worth of that stuff. It is unlimited, the amount; 5,000,000; 10,000,000."

Q. Well, did he say he actually had \$2,000,000 worth of it?

A. He said "I have got \$2,000,000; I can lay my hands on \$2,000,000;" the very words he used.

Q. Did he say where?

A. No; he never told me where.

Q. Did he say he had them in his home?

A. I gathered from that that he had them in his home. He said "I could get them in ten minutes' time."

Q. But he did not tell you where he had them?

A. He did not tell me where he had them, no.

1032 Q. Did he say whether he had any safe deposit boxes?

A. No; he did not tell me that.

Q. Did he say where he had his bank account?

A. He did not tell me that.

Q. Well, did you know by that time, his name?

A. I knew his name then.

Q. How did you know it?

A. I got it from Newman.

Q. How did you get it from Newman?

A. I pressed Newman one night, and he told me.

Q. How long after October 12th was that?

A. That was about three days, or two days after Williams was arrested. I came right to Newman——

Q. Did Newman then tell you the whole story?

A. He told me his name was Nick Arnold.

Q. Well, did he tell you the whole story?

A. No.

Q. What did he tell you?

A. He just told me who his wife was.

Q. What did he say?

A. And his name was Nick Arnold.

Q. Did he say who his wife was?

A. Yes.

Q. What did he say?

A. Fannie Brice.

Q. Did he tell you who the other man was?

A. No. Sullivan did.

Q. When did Sullivan tell you that?

A. Going to meet him up in the Taxicab that day.

Q. And did Sullivan tell you about both then?

A. Yes. He confirmed it. I told Sullivan this fellow's name, and he said "I knew it."

Q. Did Sullivan say he knew it from the beginning?

A. Yes sir.

Q. Both of them?

A. Yes sir.

Q. He knew both parties from the beginning?

A. No; not from the beginning; he said "I knew it a long time ago."

1033 Q. And you did not know it until Williams had been arrested?

A. No. I did not.

Q. Then you went to Newman's office?

A. No; Newman was over to our office all the time. I took him up in the private office up in front there.

Q. And what did you say?

A. I said "Newman, I want to know who in hell that fellow is."

Q. Meaning Nick Arnstein?

A. Yes. "Who is the fellow that Dave met up at the Hotel? And I want to know." He said "I gave my word"—I said, "I don't care a damn about your word." I said "I want to know." I said "This thing is liable to get somebody in a lot of trouble; I want to know who in hell that fellow is." And then he told me.

Q. He said he was Nick Arnold, and his wife was Fannie Brice?

A. Yes sir.

Q. Now, did you talk with Cohen that night when you got up to the roadhouse?

A. I did not have much to say to Cohen, no; not anything that would be material.

Q. Have you told us everything that you said to Arnstein and everything he said to you?

A. Coming back in the taxicab Sullivan said "I am through." He said, "You are like hell, through."

Q. Who said that; Arnstein or Cohen?

A. No; Cohen. He said "You are like hell, through." He said "We have got those securities, and God damn it, you have got to get rid of them; you have gone so far; you have got to go farther."

Q. Who said this?

A. Cohen.

Q. Where did he say that?

A. In the taxicab.

Q. Coming home?

A. Yes sir.

1034 Q. Now, repeat that again; just what he said; his exact words, as well as you remember them.

A. Sullivan said "Well, I am through."

Q. Why did he say that?

A. He said, "I am not going to handle any more of that stuff at all."

Q. That was after you had handled about six or \$700,000 of it?

A. Yes.

Q. Yes?

A. And he said "I am going to take as much as I can out of the bank, and you fellows can have it. I don't want it." And then this fellow said "Like Hell you are. God damn it, you are not going to be through; you are not through. We have got that stuff, and you have got to get rid of it."

Q. "For us?"

A. "For us."

Q. Meaning the 2,000,000?

A. Yes. And he said "Sullivan, I don't want any God damn double crossing here, or," he said, "I will kill you in a minute."

Q. That is what Cohen said?

A. Yes. And he said "If I could not do it, if I am locked up, there are plenty more of my gang could do it."

Q. Did he say who his gang were?

A. No. He said to me "Don't you ever open your mouth about this, or you will be taken damn quick."

Q. What did he mean by that?

A. He meant I would be killed.

Q. Did he say by whom?

A. He did not say by whom. And I said "Oh, you are a lot of bull." I said "You ain't going to kill anybody." He said, "Well, I don't want to argue with you." I said "Well, Christ; to hell with you; what in hell do I care about you?"

Q. That was what you were saying to Cohen?

A. Yes. And then I hit Sullivan in the arm, in the side, 1035 to keep him quiet; to calm him off.

Q. What did Arnstein say?

A. Not a word; he was trying to smooth everything over. He said "All right, fellows; that is all right; he was just a little excited."

Q. Then they were very much excited about Williams' arrest?

A. Very much, yes sir.

Q. And they thought that you and Sullivan had bulled matters?

A. They thought Sullivan had. They knew I had not; because I was not handling any of it.

Q. They thought Sullivan had been very indiscreet in letting them get around?

A. Yes.

Q. And Sullivan was trying to explain that he understood from Cohen and Arnstein that those securities could be negotiated?

A. Yes.

Q. And they were trying to tell Sullivan that they had previously impressed upon him that they could not be negotiated?

A. That is right.

Q. Is that right?

A. Yes, that is right.

Q. Now, when next did you see Arnstein or Cohen?

A. I never saw them again.

Q. Now let us get this straight: You only saw Arnstein and Cohen on two occasions?

A. That is all.

Q. October 12th of last year; and then about a month later in a taxicab going up to that roadhouse and returning?

A. Oh yes, I did; I saw both of them once again; but that was an accident.

Q. Where was that?

A. That was in the Union Station.

Q. Where is that?

A. Pennsylvania Station.

Q. New York?

A. New York, yes. I was down to meet a friend; just who it was I just cannot remember; and I saw them and a girl getting off of a train.

1036 Q. Where were they coming from?

A. I don't know.

Q. Do you know when that was; was that before Williams' arrest, or after?

A. That was after Williams' arrest.

Q. Well, was that after Sullivan & Company shut down?

A. No sir.

Q. Well, when was it, in relation to Election Day last year?

A. It was just a day or two after Williams' arrest.

Q. And the meeting was purely accidental?

A. The meeting was purely accidental.

Q. Did Arnstein have his mustache then?

A. Yes sir.

Q. Is this picture which you have looked at a good likeness of Arnstein? (Showing witness.)

A. Yes indeed.

Q. Can you describe some of his characteristics?

A. Deep voice; very pleasant; very much of a gentleman.

Q. Were there any scars on his face?

A. I did not notice any.

Q. Is his nose unusually prominent?

A. Yes.

Q. Does it look very Semetic?

A. What do you mean by that?

Q. Very Jewish.

A. No; I would not say that.

Q. Is his hair grey back here above the ears?

A. I did not notice that. I never saw him with his hat off.

Q. How does he wear his hair? Pompadour?

A. I never saw him with his hat off.

Q. Are his ears unusually large?

A. I did not notice that particularly.

Q. Did you notice any lines in his face?

A. I never noticed any.

Q. Did you notice whether his neck was very chunky?

A. I did not notice that.

Q. Is his hair black?

A. My opinion is that it is.

Q. Will you describe his mustache?

A. It is cut off very snugly.

1037 Q. How was he dressed? How would you identify him now? What would cause you to identify him now if you noticed him, if you saw him in the street?

A. His nose.

Q. What is there about his nose?

A. It is very long and pointed.

Q. A Roman nose?

A. No; it is just a very long nose. I could tell him.

Q. How would you tell him?

A. That is how I would tell him.

Q. By what mark would you tell him?

A. I would not tell him by any mark, because I did not discover any marks on him. I was not with him that long.

Q. What kind of a collar did he have on?

A. I do not remember that either.

Q. Was his collar the same as his shirt?

A. I don't remember that; but he was dressed very flashy the night I saw him.

Q. What do you mean by flashy?

A. Well, very English; very neat.

Q. Clothes cut in an English way?

A. Yes; and I believe he wore a cane that night.

Q. How would you recognize Cohen again?

A. Well, he was very untidy both times I have seen him. He looked like a guerilla.

Q. What is there about his appearance by which you would recognize him?

A. I just remember his face; that is all.

1038 Q. What is there about his face by which you would recognize him?

A. I believe there is a scar on his face if I am not mistaken.

Q. Where?

A. I just don't recall; but I believe there is one.

Q. What about his nose?

A. It looks more Jewish than the other fellow's.

Q. Well, is he as tall as Arnstein?

A. No; he is a man about five feet five, and stout.

Q. Well, is he good looking?

A. No.

Q. Is he homely looking?

A. Well, I would call him so. Now, that picture don't look anything more like him than I do.

Q. You could not tell him from this picture?

A. I could tell him by that picture. But it does not look like him; that flatters him.

Q. Well, does this picture look any more like him? (Showing witness another photograph of Nick Cohen.)

A. That is the same picture. He never looked like that. His hair was never combed.

(At this point recess was taken until 9 p. m. at the Colony Club.)

1039

In the Matter of NICHOLAS ARNSTEIN.

New York, April 19th, 1920—9.30 p. m.

(At the Old Colony Club, N. Y. City.)

After Recess.

Present: Counsel and the witness, as before.

W. W. EASTERDAY recalled.

Examined by Mr. Myers:

Q. Mr. Easterday, as I recall it, you met Arnstein and Cohen on three different occasions; is that right?

A. Yes sir.

Q. The first time was on October 12th, Columbus Day of last year; is that right?

A. Yes sir.

Q. And the second time was about a month after that, in a taxicab; is that right?

A. That is right.

Q. At the time you went up to that roadhouse?

A. That is right.

Q. And the third time was about two days before the arrest of Williams; is that right?

A. After the arrest of Williams.

Q. About two days after the arrest of Williams, you met Arnstein and Cohen accidentally at the Pennsylvania Station, New York City?

A. Getting off of some train.

Q. Do you know the name of the girl that they were with?

1040 A. I never saw her before.

Q. Will you describe her?

A. No; I did not look at the girl; I just saw that there was a woman with them—a young girl it was.

Q. Was it Miss Meeker?

A. I don't know Miss Meeker.

Q. Were you introduced to her?

A. No.

Q. Can you recall any other time that you met either Arnstein or Cohen?

A. That is all. I thought it over at dinner time.

Q. Did you at any time meet Charles Druckker?

A. I don't know him by name.

Q. I show you Exhibit 4 for identification on April 10th, 1920, and

ask you whether you have ever seen that party before? (Showing witness.)

A. Never in my life.

Q. I show you Exhibit 3 for identification of April 10th, 1920, and ask you whether you ever saw that party before? (Indicating.)

A. Never.

Q. Did you ever meet Ed. Furey?

A. Never.

Q. Did you ever hear Arnstein or Cohen talk about Ed. Furey?

A. Never.

Q. Or about Druckker?

A. Never.

Q. Or about Winkler?

A. No.

Q. Did you ever meet Joseph Gluck?

A. No.

Q. Or Irving Gluck?

A. No.

Q. Did you ever hear their names discussed by Arnstein or Cohen?

A. Never.

Q. Did you ever meet either one of the Bunero brothers?

A. No.

Q. Or Fox?

A. No.

Q. Did you ever hear their names discussed by Arnstein or Cohen?

A. Never.

Q. Did you ever meet Jim Ryan?

A. Never.

1041 Q. Did you ever hear his name discussed?

A. No.

Q. Did you ever meet John J. Morey?

A. No.

Q. Did you ever hear his name discussed?

A. Never.

Q. Did you ever meet Phil, Kastel?

A. Never.

Q. Did you ever hear his name discussed?

A. Only by Sullivan.

Q. When was that?

A. I understand, at any time you wanted to meet Arnstein or Cohen, you could meet them through Kastel.

Q. Who did you understand from that; Sullivan?

A. From Dave Sullivan.

Q. When did you understand that? Between October 12th and—

A. (Interrupting.) After the arrest, when Sullivan came back.

Q. What do you mean, "when Sullivan came back"?

A. From the Tombs.

Q. When was Sullivan arrested?

A. Five weeks before Christmas.

- Q. And he got out on Christmas Eve?
A. Christmas Eve.
Q. Did you ever meet Cheeks Ginsberg?
A. Never.
Q. Did you ever hear his name discussed?
A. No sir.
Q. By anyone?
A. No sir.
Q. Did you ever hear the name Lloyd discussed?
A. No.
Q. Did you ever meet him?
A. No.
Q. Did you ever meet anyone by the name of Goldberg?
A. No—you mean Nat Goldberg?
Q. No.
A. No.
Q. Did you ever hear his name discussed?
A. No.
Q. Did you ever meet Louis Bleet?
A. No.
Q. Did you ever hear his name discussed?
A. Never.
1042 Q. Did you ever meet Frank McGee?
A. Is that the partner of Fallon?
Q. No. Of Fuller & Company?
A. No.
Q. Did you ever hear his name discussed?
A. No.
Q. Did you ever meet Louis Eschner?
A. No.
Q. Did you ever hear his name discussed?
A. No.
Q. Did you ever meet David Haines?
A. No.
Q. Did you ever hear his name discussed?
A. No sir.
Q. Now, were you ever in Cleveland?
A. No sir.
Q. Were you ever in Montreal?
A. Never.
Q. Were you ever in any part of Canada?
A. No sir—I have been, but not in the last three years.
Q. Did you ever meet a man named E. P. Bryant?
A. Never.
Q. Or Josephine Weil?
A. No sir.
Q. Or Loretta McDermott?
A. No sir.
Q. Jim Ryan?
A. No sir.

Q. Frank Ryan?

A. Yes.

Q. When did you meet Frank Ryan?

A. Four years ago.

Q. Not in the last four years?

A. I have not seen him for damn near a year now.

Q. Where did you see him last?

A. Where? In New York City.

Q. In connection with what?

A. A personal friend of mine.

Q. Did you have any business transactions with him?

A. Is he the Frank D. Ryan, the Tammany fellow?

Q. That is Frank Ryan of Grant & Company.

A. Yes; that is the fellow.

Q. Did you have any business dealings with him?

A. I knew him intimately for four years, while I was with J. M. McNey & Company; he was a partner.

1043 Q. He was a partner?

A. Yes.

Q. Did you have any dealing with Frank Ryan during the past year?

A. No sir.

Q. Of any kind?

A. No sir.

Q. In the past two years?

A. Yes.

Q. What was that last business transaction you had with him?

A. J. M. McNey & Company.

Q. What was that about?

A. That was a firm that I was running, and J. M. McNey and he were partners.

Q. Do you know Fred. Gondorf?

A. No sir.

Q. Or Charles Gondorf?

A. No sir.

Q. Do you know the brokerage concern of Fairbanks & Gosselin?

A. No sir.

Q. Do you know a man named Cudmore?

A. No sir.

Q. Or Kenneth L. Bernard?

A. No sir.

Q. Or Frank E. Herna?

A. No.

Q. Or McRea?

A. No.

Q. Do you know Blanche Merrall?

A. No.

Q. Do you know any members of Arnstein's family?

A. No.

Q. Either on his side or on his wife's side?

A. No.

Q. Do you know any members of the family of Ed. Winkler?

A. No.

Q. Do you know Herbert Weil?

A. Is he the Weil or Secor, Weil & Company?

Q. I don't know.

A. Members of the New York Stock Exchange?

Q. I don't know.

A. No; I don't know that man you speak of.

Q. What Weil do you know? Secor, Weil & Company?

1044 A. Yes sir.

Q. Don't you know his first name?

A. Myron I always thought his name was.

Q. Do you know Mae Weston?

A. No.

Q. Do you know Annie Russell?

A. No.

Q. Did you ever receive any securities from Arnstein?

A. No sir.

Q. Or from Cohen?

A. No sir.

Q. Did you ever give them any securities?

A. No sir.

Q. Did you ever receive any moneys from them?

A. No sir.

Q. Did you ever give them any money?

A. No sir.

Q. Did you ever receive any securities from Newman?

A. I did not.

Q. Did you ever give him any?

A. Never.

Q. Did you ever receive any moneys from Newman?

A. In loans, yes.

Q. How much?

A. Well, he has kited checks with us.

Q. That is all?

A. And he has loaned me money personally.

Q. How much?

A. Oh, four or \$500.

Q. Did Arnstein ever tell you where they had any securities concealed.

A. He did not say that he had any securities concealed; but he said he had \$2,000,000 worth, and his source was unlimited; he could get 5,000,000, 10,000,000; anything that he wanted.

Q. Did Cohen ever tell you where he had any securities hidden?

A. No, never.

Q. Did either one of them tell you about any securities being hidden in Jersey City, or Hoboken?

A. Nobody outside of Sullivan.

Q. What did he tell you, and when?

1045 A. He told me that they delivered to him \$200,000 worth of Liberty Bonds in a big package, and that he would not bring it over, because it was too bulky; and that they left it over

there. Sullivan denies that he tells me that; but that is on my first record, and that is what he told me, nevertheless.

Q. Were you ever to Mr. Arnstein's home?

A. Never.

Q. Was Arnstein or Cohen ever in your office in New York?

A. No; never.

Q. Did they ever call you up on the telephone?

A. Yes.

Q. Did you talk with them on the 'phone?

A. Yes.

Q. When?

A. Well, they would call up asking for Sullivan, and when Dave was not there, I would talk to them.

Q. What was the conversation about?

A. When Sullivan would be back. And he was very peeved at one time.

Q. Who is "he"?

A. I don't know which one it was; I could not tell; the voices were very much alike.

Q. What is that?

A. The voices are very much alike; I could not distinguish which one it was, and I did not want to—at that time I did not know what their names were, and I just could not say. He told me one time that he had gotten \$2,000,000 worth of bonds, and was waiting for us to handle them.

Q. You testified here in Washington that Arnstein called you up on the 'phone and he said "I have got \$2,000,000 now as soon as Sullivan comes in." Is that correct?

A. Yes sir.

Q. Can you fix that time?

A. It was about three weeks after the start of this receiving of stock from them.

1046 Q. Did you ever meet Arnstein or Cohen in any other city?

A. Never.

Q. Now, have you told us of all the meetings you have had with Arnstein or Cohen?

A. Absolutely.

Q. And have you told us all that they ever said in your presence, on the question of securities?

A. Everything that I can think of at this time. My mind may be refreshed if somebody would help me to remember some incident.

Q. Did you ever go to any bank with Arnstein or Cohen?

A. No sir.

Q. Did you go to any bank with Sullivan?

A. No sir.

Q. Or Bowles?

A. No sir.

Q. And you had nothing to do with the negotiation of the negotiations?

A. Not a single one.

Q. Have you ever had any talks with Mr. Fallon or Mr. McGee, his partner?

A. Mr. Fallon and Mr. McGee, both.

Q. When?

A. In Washington, while Sullivan was in the Tombs.

Q. Can you fix the time?

A. The second week he was in the Tombs. About November—or December 15th, 8th; something around there.

Q. What was the conversation about?

A. Well, he was fixing the case up for trial.

Q. Whose case?

A. Sullivan's—no; the first time I met McGee, he came down trying to get Sullivan out, about the 8th; and then after Sullivan got out, about a week or two after he got out, then Fallon came down. That is the first time I saw Fallon.

Q. How did McGee come to make that trip to Washington?

1047 A. He came down with the bondsman.

Q. Who was the bondsman?

A. Jeremiah O'Leary.

Q. How did he come to Sullivan, do you know?

A. I heard through these fellows in the Tombs, that Dave—

Q. (Interrupting.) Who were they?

A. The fellows of the Bishop Service; what are their names?

Q. The Sugarman's?

A. Yes.

Q. You heard from the Sugarman's?

A. I did not hear—Sullivan was telling me how he met Fallon. The Sugarman's told him that Fallon was the best criminal lawyer in New York, and Sullivan sent after him, after Fallon; and Fallon came over to see him.

Q. That is how Fallon & McGee were retained?

A. That is what Sullivan says. I know they have never given him any fee; I know that.

Q. Fallon & McGee have not received any fees from Sullivan?

A. No sir.

Q. Well, who has paid them?

A. I don't know.

Q. Well now, you met McGee in Washington; is that right?

A. Yes sir.

Q. Did you have any conversation with him?

A. Well, only we were going around—I was going around that day with him trying to get a bond for Sullivan to get out.

Q. Did you talk about the case?

A. No. I did not know who he was, and I would not talk to him anyhow.

Q. Then later you met Fallon; is that right?

A. Yes sir.

Q. In Washington?

A. Yes sir.

Q. And can you recall the conversation?

- A. He wanted to know all the ins and outs of the case; and it was told to him.
- 1048 Q. By whom?
- A. Sullivan and Bowles and myself.
- Q. All together?
- A. Yes.
- Q. Do you recall what you told him?
- A. Everything that you see there on this record.
- Q. Everything that you have testified to here tonight?
- A. Yes sir.
- Q. Then what did he say?
- A. He said it was a cinch.
- Q. How?
- A. He said it was a cinch; not to worry; to go up and sleep.
- Q. Did he tell you whether he represented Arnstein?
- A. He did.
- Q. What did he say?
- A. He said he represented Arnstein.
- Q. And Cohen?
- A. I don't believe he mentioned Cohen's name at this time.
- Q. Well, did he show you anything to convince you that he represented Arnstein at that time?
- A. The only thing he said is that they have not caught him yet; that you fellows were on dead trails up here.
- Q. When was this; in the Fall of last year?
- A. It was after Christmas.
- Q. Well, it was certainly before Lincoln's Birthday?
- A. Sir?
- Q. It certainly was before Lincoln's Birthday of this year?
- A. It was about a week and a half after Christmas.
- Q. Where was Fallon stopping?
- A. That I don't know. I believe the Willard. Bowles took him home.
- Q. Home where?
- A. Bowles took him downtown.
- Q. Well, from where?
- A. From my house; he came up to my house on Park Row.
- Q. That is where these conversations were had?
- 1049 A. Yes sir.
- Q. You were there, and Sullivan, and Bowles, and Fallon?
- A. Yes sir.
- Q. That all?
- A. Another lawyer by the name of Dyer.
- Q. D-y-e-r?
- A. Yes sir.
- Q. From New York?
- A. Yes sir.
- Q. John Dyer?
- A. John Dyer.
- Q. Well now, did you tell Fallon at that time, and Dyer—
- A. (Interrupting.) Not Dyer.

Q. Why?

A. We did not admit anything to Dyer.

Q. Well, did Dyer step aside?

A. Yes sir.

Q. Then you told Fallon that Sullivan and Bowles had negotiated \$600,000 worth of those securities, or thereabouts?

A. They told him that.

Q. They told him that?

A. Yes sir.

Q. And you heard it?

A. Yes sir.

Q. Did Fallon admit that there were more securities?

A. No, he did not admit that.

Q. What did he say about other securities?

A. He gave us the understanding that he was protecting Arnstein, and that the money was passed from Arnstein to them, for Sullivan in the Tombs.

Q. Did he say how much?

A. Four or \$500 at a clip.

Q. You mean to say he was being paid by Arnstein to look after Sullivan; is that right?

A. No; he did not say that he was being paid—they would give money to—

Q. (Interrupting.) Who were they?

A. Arnstein, he would say—he did not say anything about the other fellow—was giving money to Fallon to send in to the Tombs to Sullivan.

Q. Did he say how much he had gotten that way?

1050 A. Sullivan said he got \$500 one lick.

Q. But did Fallon tell you at this time in Washington how much money he had gotten all together from Arnstein for Sullivan?

A. About six or \$700.

Q. Well, did Fallon discuss any other securities at that time?

A. No; he did not discuss any, but he led me to believe that he knew where some were.

Q. Well, in what way did he lead you to believe that he knew where securities were?

A. Well, I just don't know what way; but from his talk and from his laughter, and one thing and another, I took it—maybe I am suspicious—I took it that he knew where there were some securities, and that I thought that he had been paid a fee through some securities, in times gone back.

Q. Paid a fee for what?

A. That he was paid a fee with securities.

Q. Well, what did he say; anything on the subject? Did he say that he had securities?

A. No, he did not say that he had securities.

Q. Did he say that he had ever received any securities?

A. He said, at the time he asked Mr. Sullivan if he has got any more stock. Sullivan said "No, I have not got any more." And I

just don't remember, Mr. Myers, his very words; but he made me think that they had some stock; or had received some for their fee, of some kind.

Q. Did he say how much?

A. No; he did not say how much. I imagine it was a small amount. But he did say that he advised Arnstein not to touch any of that murder stock.

Q. Now, tell us all about that.

A. That is all I know about that.

1051 Q. Well, what do you know about that?

A. That is all; just what I just told you.

Q. What did he say? What were his words?

A. I asked him myself. I said "Does any of this stock belong to those fellows up there that were killed?" He said "No, indeed." He said "I have told Arnstein not to dare touch any of that stock."

Q. Meaning the Binkowitz stock?

A. Yes; where that murder was.

Q. Was the name mentioned, Binkowitz.

A. Binkowitz.

Q. Well, who mentioned it; Fallon or Sullivan?

A. I mentioned it to him.

Q. What did you say?

A. Just what I said there on the record.

Q. Well, state it over; I do not get it.

A. I asked him if any of this stock——

Q. (Interrupting.) Which stock?

A. That Sullivan had.

Q. Yes?

A. Was that Binkowitz stock. He said "No, indeed." And he said "In fact, I have instructed Arnstein not to touch any of that stock; and he has not; so you are safe on that."

Q. How did you come to bring up the question of the Binkowitz murder?

A. I will tell you why: Because I thought that Mr. Dooling would use that as a hammer for somebody's head, and put them in jail without bond, if he possibly could figure it in any way; and that is the only thing that worried me in the whole transaction: That I would be grabbed, without bond.

Q. You felt that it might have been claimed by Mr. Dooling that Sullivan & Company had been handling securities received from Arnstein and Cohen which were at one time taken away from Binkowitz at the time that Binkowitz was murdered?

1052 A. That is the idea.

Q. And you felt that if Mr. Dooling could fasten upon you or Sullivan or Bowles, the charge of murder, or to be implicated in the murder, that you could not get out on bail; is that right?

A. That is right.

Q. And you were worried as to whether Sullivan & Company had received any of the Binkowitz securities?

A. That is the idea.

Q. So Fallon told you that he knew about the Binkowitz securities; is that right?

A. No; he just said—well, he implied that he knew, when he said that he had instructed Nick not to touch any of the Binkowitz stock.

Q. You mean Nick Arnstein?

A. Yes.

Q. Did he say when he had instructed him?

A. No.

Q. Well, this conversation was about the middle of January of this year?

A. No sir; this was about a week or two after Christmas.

Q. The first week in January?

A. Yes.

Q. The first week in January this year?

A. This year, yes.

Q. Then he said that he had previously instructed Nick Arnstein not to touch any of those Binkowitz securities?

A. That is right.

Q. But he did not tell you when he had given such instructions?

A. No sir.

Q. Well, did you understand from your talks with Fallon, that he knew that Arnstein was stealing securities right along?

A. I took it that he knew it, yes.

Q. And did you understand from your talks with Fallon that he, Fallon, had been advising Arnstein about these stolen securities?

A. In my opinion, I thought he had.

1053 Q. As to what to do with them and so forth?

A. Well, that is what I thought at that time.

Q. Well, did you understand from your talks with Fallon that he had been advising these thieves to steal the bonds and stocks?

A. Oh no; I don't think he would do that.

Q. What?

A. I don't think he did that, no.

Q. He was simply advising them what to do after they got them; is that right?

A. I believe that, yes.

Q. Is that right?

A. Yes.

Q. And that all through January of this year Fallon knew all about these stolen securities?

A. Oh yes. I know that.

Q. What?

A. I know he did.

Q. Well, how do you know he did?

A. Because he was talking about it, wasn't he, on the first of January, or the 5th or 6th of January, with us?

Q. Did you ever see Fallon after that?

A. I saw him once in the theater.

Q. Did you have any talk with him about this case?

A. No; just shook hands with him.

Q. And you have never seen him since?

A. Yes; I saw him walk into the elevator at Reisenwebers.

Q. When was that?

A. When we were first up here.

Q. Well, when was that?

A. The night that Sullivan saw him.

Q. Can you fix the time?

A. When he did not see me.

Q. He did not see you?

A. No.

Q. And you did not talk with him?

A. Oh no; I got out.

Q. Have you ever been to his office?

A. Never in my life.

1054 Q. Have you ever met him anywhere else in New York?

A. Never.

Q. Have you ever received any letters from him?

A. No.

Q. Or Communication of any kind?

A. No; not personally.

Q. Well, how?

A. Through Sullivan.

Q. When was that?

A. Well, all the time. Whenever Sullivan would see him, he would tell me when he saw him. Sullivan would call him up all the time.

Q. Now, have you told us all the meetings you have had with Arnstein?

A. Yes sir.

Q. And Cohen?

A. I have.

Q. And with Fallon?

A. Yes sir.

Q. And McGee?

A. Yes, I did not talk anything in the case, or admit anything, to McGee; and he never asked me.

Q. Do you know where any securities are now?

A. No sir.

Q. Other than those about which you have testified?

A. I do not.

Q. Did you ever know?

A. I never knew.

Q. Do you know where Arnstein and Cohen are?

A. No sir.

Q. Did you ever know?

A. No sir.

Q. Did you have any communication directly or indirectly with Arnstein or Cohen since Christmas last year?

A. No sir.

Q. Do you know anyone by the name of Marino?

A. No.

Q. Or Nicholson?

A. No.

Q. At the time that you met Cohen and Arnstein, did you
1055 know that they had criminal records?

A. No sir.

Q. When did you first find that out?

A. Dave told me that Arnstein had been to Sing Sing.

Q. When did he tell you that, do you recall?

A. After he told me who they were—after I told him, in fact, who Nick Arnstein was; then he told me about the rest of them—not the rest of them; but about the two.

Q. Did you ever hear the name of Arnold Rothstein mentioned in connection with these matters?

A. No sir.

Q. Or E. P. Strong?

A. Only what I have seen in the newspapers.

Q. Did you ever have any dealings with Sutro & Kimbley?

A. No sir.

Q. Do you know a man named Charles Dohr?

A. No sir.

Q. Do you know Mattie Pandolfi?

A. No sir.

Q. Or Joe Peppe?

A. No sir.

Q. Did you ever hear their names discussed?

A. Never.

Q. Mr. Bowles testified that Williams was arrested on November 10th last year. Does that help to recall the matter to your mind?

A. On November 10th? It was about the 11th or 12th that I saw those fellows come from the train then. That was on the 12th, because it was on a Saturday. Williams was arrested on a Friday, wasn't he? That is right; it was on Saturday; it was the 11th.

Q. What were your relations with the firm of Secor, Weil?

A. We used to do a lot of clearance, and trading with him.

Q. Who did you know there?

A. I knew them all.

Q. Well, who are they?

A. Secor.

Q. What is his first name?

A. I don't know his first name.

Q. Well, what is Weil's first name?

A. Myron.

1056 Q. Who else do you know there?

A. Tuckman.

Q. How do you spell that?

A. T-u-c-k-m-a-n.

Q. Who else?

A. Ike Hessberg.

Q. Who else?

A. That is all.

Q. Were all your transactions with that firm regular in every respect?

A. Yes sir.

Q. There were no irregularities?

A. No sir.

Q. Of any kind?

A. No sir.

Q. Mr. Bowles has testified that there were.

A. Well, there is not. I don't care what he testified to.

Q. What transactions did you have with them?

A. Buying and selling of securities, stocks that were not traded in on the Consolidated; carrying our position stocks over there.

Q. You say they had no knowledge of the fact that these securities were stolen securities?

A. No sir.

Q. How much stocks did you have with them all together?

A. About \$100,000.

Q. Well, who arranged it with them; you?

A. Sullivan, Bowles, and myself.

Q. Well then, you don't know what Sullivan did, or what Bowles did; is that right?

A. No; we were all three there together.

Q. Well, what were the transactions? What transactions did you have with them?

A. Stock that could not be traded in on the Consolidated Stock Exchange, and stocks that we went short on, customers' stocks, we took a position, and there is where we took it, over there. And stock that we wanted to sell out and get quick money on, we took there.

Q. You say you never had any irregular transactions with them of any kind?

A. No sir; there is not a straighter house in the Street than they are.

1057 Q. And you never received any money back from them?

A. Not a dime.

Q. No gratuity of any kind?

A. No sir. That was the understanding when we went there with the account, too; and he made that damn strong to me. Nobody can say a word about Secor, Weil.

Q. Now, the three accounts carried on the books, Enright, Wall, and Steele, were fictitious accounts, were they not?

A. Yes sir.

Q. And they represented the accounts of Arnstein and Cohen?

A. Yes sir.

Q. And you knew that from whom?

A. I knew that from Sullivan.

Q. Did you know it from Arnstein?

A. No.

Q. Did you know it from Cohen?

A. No.

Q. Well, when did Sullivan tell you?

A. Sullivan went to Browder and told him to fix those accounts on the books.

Q. Well did you hear Sullivan do it?

A. I saw him do it.

Q. Well, what did he tell him?

A. He told him to put down Charles Enright, and that those were the accounts that he took in to-day. After the first one—the first one came through regular—correspondence and everything else on from the Washington office. And then the next amount, he came in and told Browder, he said "Here; put this man's name"—he had it all written out and gave it to Browder—"But this man's down at the Commodore Hotel, under the name of Steele."

Q. Did he tell him who Steele was?

A. He told him, he said a friend of his, and he wanted to 1058 do some trading there.

Q. Did he tell him it was a regular transaction, or what?

A. Sure.

Q. And Browder understood that there was such a person as that?

A. Certainly he did.

Q. All the time; down to the failure?

A. Not all the time.

Q. When did he find out differently?

A. He never found out absolutely; but he came to me one day and he said "Say, what is this? I don't like the way this looks; this don't look regular." I said "It is regular so far as I know. See Sullivan about it." He said "Go on; you are kidding somebody."

Q. Do you know what this check is: No. 1166, on the Bankers' Trust Co., November 6th 1919, for \$168.73? (Indicating stub check book.)

A. No; you will have to have the draft. Draft No. 698 will tell you that.

Q. Well, where is the draft?

A. I don't know.

Q. Well, there really was not any such draft, was there?

A. Oh yes; absolutely.

Q. Where did it come from?

A. I can't tell. Maybe some customer's account; it may be salaries account.

Q. Where are the drafts?

A. I don't know. I left the office a week, you know, almost a week before it closed.

Q. Well, were not the drafts up in the large numbers?

A. No.

Q. 5,000?

A. No; they ran all different numbers; started to use a book—oh yes; I think 5,000 was printed; and they started to grab a book here and there. There were only 100 in a book you know.

Q. Well, whose handwriting are these entries in? (In- 1058½ dicating in stub check book.)

A. Browder's.

Q. Well, is there any way of telling what the draft was for?

A. No; unless you have the draft.

Q. Well, if the draft is destroyed, you cannot tell?

A. No.

- Q. Were the details entered in any other books?
- A. There is supposed to be a cash book.
- Q. Where is the cash book?
- A. I don't know. The cash book: look at that; it will show who it was paid for.
- Q. You have not got the cash book?
- A. No.
- Q. Do you know what became of it?
- A. No sir.
- Q. Do you know what this check was for, 1165, November 6, 1919 (indicating stub)?
- A. 1165, Tax Stamps.
- Q. What was that for?
- A. That was for stamps that go on stocks; State and Federal Taxes.
- Q. Well, do you know that it was used for that purpose?
- A. I don't know, because this is his writing.
- Q. Do you know what this check was for, 1159, November 6th, 1919, \$457.51 (indicating stub)?
- A. Payment on draft. There is the amount of the draft.
- Q. You cannot tell anything without seeing the draft?
- A. No.
- Q. No. 1158, same date (indicating stub)?
- A. No use trying to get it from that.
- Q. Do you know what that \$300 was used for, November 6th, 1919?
- A. No sir. Those checks were all signed in blank.
- Q. What do you mean, signed in blank?
- A. Signed up in blank, and given to——
- Q. (Interrupting.) Signed up by whom?
- A. Signed up by me.
- Q. Who did you leave them with?
- A. Browder. He is the one that Sullivan put in charge—
1059 put over me in fact.
- Q. Mr. Bowles says that you can explain it. Now you say that Browder has to explain that; is that it? All these marked with an "E," Mr. Bowles has testified that you know about.
- A. How in hell would I know about them? How would Bowles know that I would know about them?
- Q. That is his testimony.
- A. I don't care anything about his testimony. I am telling you that I could not tell. Browder could not tell himself.
- Q. What do you say about check No. 1155 for \$100 (indicating stub)?
- A. Petty cash. We used a lot of petty cash around there.
- Q. November 5th 1919, No. 1153, \$100; what was that used for (indicating stub)?
- A. I don't know. Petty cash around the office I guess.
- Q. Then here is another check, No. 1152, Chase National Bank, \$603 (indicating).
- A. That is some draft.
- Q. You don't know what that was for?

A. Didn't you fellows get the stubs? When Dooling raided the office, didn't he get the stubs of the check books—the stubs of the draft books?

Q. I do not know.

A. That is what he ought to have gotten. You could tell where every nickel went; everything paid out through draft in our firm, except actual stocks.

Q. Can you testify to any of these stubs without the drafts?

A. No sir; nobody else can, either. All those made out in the firm's name were deliveries of stocks, you know; they are all Consolidated members. What is that, cash, Norman S. Bowles and D. W. Sullivan (indicating)?

Q. You cannot explain any of these checks? Do you know what this check is, No. 1122, R. M. Newman \$1,000 (indicating)?

1060 A. Yes; that was \$1,000 that Newman got—one of the \$1,000.

Q. How much did Newman get altogether?

A. Four or \$5,000.

Q. What was that for?

A. For consideration.

Q. What was the consideration?

A. For turning over this stock.

Q. For the turning over of Arnstein?

A. Yes sir.

Q. Was that because you made an agreement with him?

A. We did not make any agreement; he said he was hard up.

Q. You mean after he introduced you to Arnstein, or introduced Arnstein to you, he kept demanding \$1,000 at a time; is that right?

A. Yes sir.

Q. Until he got \$5,000?

A. Five or \$6,000; I don't know which.

Q. Does that all appear on the check books?

A. Yes; it appears in draft too; and if you had the drafts you could tell; Check Number, Payable to draft, \$1,000 draft. All of them are \$1,000. Where is the \$10,000 going? Let me see the \$10,000.

(Counsel hands witness check book.)

The Witness: No; I never signed these. Bowles signed on the Bankers Trust. I signed on the—let me see that other check book, Mr. Myers? I signed on one of them.

(Counsel hands witness stub check books.)

The Witness: It was in Bowles' name; I could sign his name, as good as his own, and I had full authority to do so. There is the way I used to sign that, Mr. Myers (indicating).

Q. That does not explain the withdrawal of many thousands of dollars by you, Sullivan and Bowles; conversation cannot explain it.

A. Well, give me the drafts, and I will do my best to help
1061 you out.

Q. You give me the drafts.

A. I have not got them; I did not raid the place.

Q. Do you know whose handwriting these entries are in; Elmer E. Steele; Charles Enright (indicating in book)?

A. It looks like Browder's handwriting; but Browder was not keeping them.

Q. Well, who was keeping them?

A. I don't know his name; a fellow we got from Secor, Weil.

Q. You cannot recall his name?

A. No. Not Herman—I don't recall his name. He was only there for a while; three weeks.

Q. Did you make any entries in any of the books?

A. Not one.

Q. Did you direct any entries?

A. No sir, I did not.

Q. Was your attention ever called to any of the entries?

A. I used to look at the balance sheet every night, and the position of the bank accounts. I never bothered about the books.

Q. Do you know who made all the alterations in this book (indicating)?

A. No sir, I do not.

Q. Were any of them made with your knowledge?

— No sir.

Q. Did you ever know that they were altered?

A. No sir, I did not.

Q. Well, you notice that nearly every page is altered, don't you (indicating)?

A. That is the margin book. The positions are put in and taken out every day, as the market goes up and down. They have to be rubbed out every day; they change with the market.

Q. Is this account of Paul D. Casey a genuine account (indicating in book)?

A. No sir.

1062 Q. Whose account is this?

A. Let me see how much 'it is. Is it a big account?

(Counsel hands witness book.)

The Witness: Yes; I think that is really all right. I think that is all right.

Q. Who is Paul D. Casey?

A. I don't know who he is. A Washington man.

Q. Is that the Casey who is on trial in Baltimore?

A. No sir.

Q. What Casey is that?

A. Danny Casey.

Q. That is not the same person?

A. No.

Q. And has not got anything to do with Danny Casey?

A. No sir.

Q. Were these accounts all genuine: George H. Gifford?

A. Yes.

- Q. Lieutenant Wood?
A. Yes.
Q. And E. Petrogill?
A. Yes sir.
Q. And William Ennis?
A. Yes sir.
Q. J. F. Meickel?
A. Yes sir.
Q. John S. Barliner?
A. Yes sir.
Q. A. F. Dempsey?
A. Yes sir. All those accounts were all right. All those small accounts, except a few; the Longley account is a dummy account.
Q. Roy H. Tiddings?
A. Yes sir.
Q. Is that regular?
A. Yes sir.
Q. Lieutenant McNair?
A. Yes sir.
Q. A. A. Corwin. Those are all regulars, are they?
A. Yes sir.
Q. What is this Annapolis Banking & Trust Co? (Indicating.)
A. That is the bank account in Annapolis.
Q. Are the entries all regular?
A. Yes sir.
Q. I notice certain accounts here in Frederick. Are they
1063 all regular?
A. Yes sir.
Q. Schmidt?
A. Every one of them.
Q. Gieber; Lewis; Russell?
A. Yes sir.
Q. Gossnell?
A. Yes sir.
Q. King.
A. Yes sir.
Q. Jamison?
A. Yes sir.
Q. Smith?
A. Yes sir.
Q. Is that transaction with the Central Trust Co. of Maryland, is that regular?
A. Yes sir.
Q. Is that account regular: Cassner?
A. Yes sir.
Q. Penticost?
A. Yes sir.
Q. Bowers?
A. Yes sir.
Q. Simpson: is that regular?
A. Yes sir.

Q. Cressin?

A. Yes sir.

Q. Lane?

A. Yes sir. Lane owes us money.

Q. Klain?

A. Klain.

Q. Butcher?

A. Yes sir.

Q. Watson?

A. Yes sir.

Q. Moody?

A. Yes sir.

Q. Perry?

A. Yes sir.

Q. Barwind?

A. Yes sir.

Q. Kendrick?

A. Yes sir.

Q. Baldy?

A. Yes sir.

Q. Well, which ones are not bona fide, of these?

A. The Longley account.

Q. Well, any of these here that are not regular?

A. There is one other one there that I am just trying to think of the name.

Q. Which other ones are not bona fide accounts here?

A. This fellow Longley's account. (After referring to book.)

1064 I do not see it in here. It was only a trading account that we used, in selling in and selling out stocks in there.

Q. Did you ever know Arnstein or Cohen by the name of George?

A. Yes sir.

Q. Which one did you know by the name of George?

A. Both of them.

Q. Well, did you know either one of them by the name of Mack?

A. No. Mack? I don't know; I don't remember—maybee.

Q. Were all your transactions with Goldberg & Heim regular in every way?

A. Yes sir. That was only Floor transactions.

Q. Well, did you have any transactions with any brokers with reference to those stolen securities?

A. No sir.

Q. In New York or elsewhere?

A. No sir.

Q. You put up some of those stolen securities with Secor, Weil & Company, didn't you?

A. Yes sir.

Q. Well, didn't they know they were stolen?

A. On a draft; I did not put them up with them. I got them to take a loan out of the Bankers Trust Co., and the Seaboard—not out of the Bankers Trust; out of the Seabo-rd National, to transfer that loan to Washington.

Q. Who arranged the transaction with Williams?

A. Mr. Sullivan.

Q. You had nothing to do with that at all?

A. I never knew anything about it; that he even let him have any of the stock.

Q. But you arranged all the legal fees with Newman, didn't you?

A. No sir.

Q. Well, who arranged them?

1065 A. Mr. Sullivan was the one that gave him every nickel of it.

Q. And you did not give him any?

A. No sir.

Q. Well, Mr. Sullivan testified that you would have to explain that.

A. Well, Mr. Sullivan gave him every one of the checks that was given to him.

Q. Well, who drew all the salary checks?

A. Mr. Browder.

Q. Well, were any checks drawn for salaries, where the money came back to you?

A. Where the money came back to me?

Q. Yes.

A. No sir.

Q. Well, do you know who got this \$1,000, November 14th, 1919? The check is drawn to cash, and it is endorsed by Morris Lairgna.

A. I think that is some of Newman's.

Q. Well, who is the party there?

A. I don't know; Newman would know that.

Q. Well, who got this \$1,000 on the same date? The check is made to Santa Maria.

A. That was a runner we had there.

Q. Well, who got the money?

A. I don't know.

Q. Well, who got this \$900 made to cash, endorsed by Dan Jacobs?

A. I suppose Dan Jacobs got it. What date was it?

Q. What would he get \$900 for?

A. He had no authority to take \$900. What date was that? Near the close? Within the last week?

Q. Will you read off all the checks which were drawn by
1066 Sullivan & Company on and after November 1st, and for what purposes they were drawn?

A. In here? (Indicating stub check book.)

Q. Yes. I want to know the fact. I don't care what is entered on the books. I want to know what the real facts are.

A. Well, I will have to take my facts out of the books.

Q. Well, start with November 1st.

A. It starts here November 6th.

Q. Well, November 6th.

A. "J. L. Marks, theatre tickets."

Q. How much was that?

A. \$32.

Q. Who got those tickets?

A. They went to somebody in the firm.

Q. Well, who?

A. Well, I don't know whether it was Sullivan, myself, or both.

Q. What is your recollection?

A. Well, all three of us used plenty of theatre tickets. I don't remember that incident, at that time, for what bill that was paid.

Q. Well, go ahead. What is the next?

A. "Marcus Heim, \$15."

Q. Was that regular?

A. That was an assessment on a death. "Marcus Heim, \$6.25; telephone booth, stock Exchange." "Marcus Heim, monthly dues, \$50." The next one is "Krinski & Co. for 10 shares of Erie, bought at 15-1/2." That is some stock that came in to us, and we paid for.

Q. Did you really get that stock?

A. Why certainly; that was some customer.

Q. Well, where did it go? What became of it?

A. We generally took and sold it out through Secor, Weil.

1067 Q. No; where did those shares go to?

A. I say, we generally took it and sold it out through Secor, Weil.

Q. Does it appear anywhere that they were sold?

A. No. I know that is what we did, though.

Q. How do you know? They may have been stolen by somebody. We are trying to find out where they went.

A. Well, I could not tell you here where they went.

Q. Well, are there any books here that will show you where they went?

A. Where is the stock blotter? If it showed on the delivery side that amount of stock, 10 shares of Erie, then you can tell whether it went out or not. If it did not, it was in the box. The next was "Federal Reserve Bank, in payment of draft 636 and 699 for \$1,315."

Q. Well, who got that money?

A. I could not tell you sir. In payment of some draft of some kind. Here is another one to "Bearer, attorney's fees, on the 7th inst., \$1,000." That goes to Newman all right. "Chase National Bank, \$122.50, in payment of draft 5535; "Bank of America, in payment of draft 3402, and 5534, \$115." I cannot tell what that was for. "American Exchange Bank, \$182, for draft 693." "Hancock National Bank, payment of draft 602, \$40." "Levy Brothers, \$67.50 20 United Profit Sharing at 3 3/8". That went to some customers; bought for some customer. "Mount & Robertson \$2,000, for fixtures, Washington office and New York office." "Cash, D. W. Sullivan, \$550." "Cash, salaries, \$1,000."

Q. Wait a minute; who got that?

A. Which?

Q. This supposed salaries? We are trying to find out what became of the moneys, thousands of dollars, of Sullivan & Company; and it is not going to be sufficient to say that you drew checks in payment of drafts and salaries. We want to know where the money went.

1068

A. How in the name of God, Mr. Myers, do you expect me to tell you where every check went to, without any books to show?

Q. Well, we have had Sullivan on the stand, and have had Bowler on the stand, and they both put it up to you.

A. Oh, they do?

Q. Yes; and you——

A. (Interrupting.) Well, I will put it up to both of them; because I could not tell you.

Q. Someone has got to tell the Court.

A. How can I tell? How can I remember every check when I did not even draw the checks?

Q. But all these checks were drawn to your order?

A. Drawn to whose order?

Q. Drawn to yours.

A. It was not drawn to my order.

Q. You ran the whole business, and you drew all the checks?

A. No; I did not draw all the checks. My handwriting does not show that I drew all the checks.

Q. Well, there was as much as \$50,000 drawn out in the last few days. We are trying to find out what became of it.

A. Well, you cannot find out from me, because I don't know, Mr. Myers. If I knew, I would be only too glad to tell you.

Q. Well, how much did you get during the last ten days that Sullivan & Company was in existence?

A. The last ten days?

Q. Yes.

A. I got about \$4,000 all together, out of Sullivan & Company.

Q. From when to when?

A. From the beginning of Sullivan & Company to the end of Sullivan & Company.

Q. When did you get the \$4,000?

A. Outside of my \$100, a week.

1069 Q. Then you got \$100 a week, and \$4,000 besides?

A. Yes sir.

Q. Then you paid a great many personal bills, didn't you?

A. I am talking about that: I am talking about \$4,000, paying additional bills that I had.

Q. When did you get the \$4,000?

A. Oh, from time to time.

Q. I mean, how much during the thirty days before the failure?

A. I did not get anything more than two or \$300 cash, Mr. Myers, at any one time.

Q. We will say between October 10th 1919 and November 10th 1919, how much did you get, salaries and all included?

A. Maybe four or \$500.

Q. That is all?

A. Yes sir.

Q. Well, who got it all?

A. It went to pay things that came in there.

Q. Well, how much did Danny Jacobs get?

A. I don't know that.

Q. Well, look at the checks and see.

A. I cannot tell with these checks, Mr. Myers, unless I look on the back of one of them now. You cannot tell by the back of the checks anyhow; he is not going to put his name on the back of these checks. There is one for 900 to Danny Jacobs (Indicating).

Q. Well, did he steal that, or did he use it in the business?

A. I don't know.

Q. Well, who knows about the affairs of Sullivan & Company? Does anyone know?

A. Mr. Browder could tell you more about it than anybody else.

Q. We have had Mr. Browder on the stand; we have had Mr. Sullivan; and we have had Mr. Bowles; and now we had you; and we cannot find out what became of all the money. There

1070 must be someone who can tell us what became of the money.

A. There is another one to Dan Jacobs for \$1,000, November 14th. When did the firm fail? Well, it was around this time; when that fellow got married and started speculating in stocks, after the firm failed I hear.

Q. Who is that?

A. Mr. Jacobs. Here is 1900 I see, with his endorsement on the back (Indicating). That is all I see. "David F. Browder, \$611, for salaries, the week ending the 22nd"—oh, this was John J. Dooling; he authorized that. That is the last check, when he had all the men up there. His name is on here. Which left a balance there of \$31,828.

Q. Now, do you recall anything that Mr. Sullivan or Mr. Bowles told you about Arnstein or Cohen, that you have not testified to?

A. Nothing but what I have told you about, that I can remember at this time, without its being brought up.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

Adjourned.

1071 In the Matter of NICHOLAS ARNSTEIN.

New York, April 24th, 1920.

Met pursuant to adjournment.

Present:

The Commissioner.

Mr. Myers, by Mr. Males.

Mr. Eugene F. McGee, representing the witness Philip F. Kastel.

Mr. McGee stipulates to produce the witness, Philip F. Kastel, one week from to-day, (May 1st, 1920) at 11 a. m.

Examination of the witness Kastel adjourned to Saturday, May 1st, 1920, at 11 a. m.

1072 United States District Court, Southern District of New York

In the Matter of NICHOLAS ARNSTEIN.

To the United States District Court for the Southern District of New York:

I, Alexander Gilchrist, Jr., Special Commissioner, do hereby report that the foregoing is all of the testimony taken before me from April 7, 1920 to April 24, 1920, inclusive under and in pursuance of orders entered in the above entitled matter.

Dated, New York, October 16, 1920.

(Signed)

ALEXANDER GILCHRIST, JR.,
Special Commissioner.

1073 DAVID F. BROWDER, being first duly sworn by Commissioner Gilchrist, testified as follows:

Examined by Mr. Myers:

Q. What is your full name?

A. David F. Browder.

Q. Where do you live?

A. 227 East 50 Street.

Q. Are you married?

A. Yes sir.

Q. Have you any children?

A. Yes sir.

Q. Are you employed now?

A. Not at present.

Q. Where were you last employed?

A. In Washington, D. C.

Q. By whom?

A. By a candy company; the Abe Lincoln Candy.

Q. Who controls that?

A. I don't know just who controls the company.

Q. Well, who did you work for?

A. I was employed by the candy company.

Q. Yes, but you were not employed by a shell; you were employed by an individual. Now, by what individual were you employed?

A. By Mr. Easterday.

Q. How do you spell that?

A. E-a-s-t-e-r-d-a-y.

Q. What is his first name?

A. Wiles W.

Q. Where is this candy store?

A. Washington, D. C.

Q. Where?

A. 10th Street, N. W. 518-10th Street.

Q. How long were you employed there?

A. About five weeks—four weeks.

1074 Q. Did you see David W. Sullivan there?

A. I am under \$10,000 bail now, you- Honor, and I have no counsel, no legal advice, and I don't wish to answer—

The Commissioner: I will advise you: You may decline to answer any question that will tend to incriminate or degrade you. If the answer to any question, to your mind, will tend to incriminate or degrade you, you can decline to answer upon that ground, stating the ground.

The Witness: Am I not entitled to legal advice?

The Commissioner: That is legal advice.

The Witness: Am I not entitled to an attorney?

The Commissioner: No; you are a witness; a witness is not entitled to an attorney. Do you understand what I say to you? If the answer to any question, to your mind and judgment, will tend to incriminate or degrade you, you can refuse to answer that question. Do I make that clear to you?

The Witness: Yes sir.

The Commissioner: If there is any question asked you which you think will tend to incriminate or degrade you, you are entitled to decline to answer.

Q. Did you see David W. Sullivan there?

A. Yes; I seen Mr. Sullivan.

1075 Q. Did you see Norman S. Bowls there?

A. Yes.

Q. Are they interested in that candy store?

A. Not to my knowledge.

Q. Is that a corporation?

A. I believe it is.

Q. Do you know what lawyer formed that corporation?

A. No sir.

Q. Do you know a lawyer by the name of T. M. Wompler?

A. I have met him, yes sir.

Q. Where?

A. In Washington.

Q. Where in Washington?

A. At his office.

Q. Where?

A. In the Munsey Building.

Q. Is he the attorney for Mr. Easterday, about whom you have testified?

A. I think he is attorney for Mr. Bowls.

Q. And is he attorney for Mr. Easterday?

A. I could not say that, sir.

Q. Is he the attorney for David W. Sullivan?

A. I do not know whether he is attorney for Mr. Sullivan in Washington.

Q. Did you ever attend any conferences in Mr. Wolpler's office when David W. Sullivan or Norman S. Bowls were present?

A. No sir.

Q. Or did you attend any such conferences anywhere else?

A. No sir.

1076 Q. Did you attend any conferences or meetings in Washington at any time with Mr. Easterday and Mr. Sullivan?

A. I have talked with them, but I never attended any conference.

Q. I mean when they were together?

A. Yes; while they were together.

Q. In that candy store, or in Mr. Wompler's office, or where?

A. Different places in Washington.

Q. State what places.

A. I think one time I met him in the lobby of the Raleigh Hotel and had a talk with them there, Mr. Easterday.

Q. State all the various places.

A. On another occasion I think I met them in the lawyer's office; in Mr. Wompler's office.

Q. Where else?

A. I think that is the only occasion I seen them both together.

Q. You were in Washington five weeks working for that candy store?

A. Yes sir.

Q. Up to what time?

A. Within a day before I came back here.

Q. When was that please?

A. I came back here Thursday evening on the Midnight; I arrived here Friday morning.

Q. What were your duties with that candy company?

1077 A. I had no special duties; I helped out when they were busy, and received cash, and made change, for the payment of the candy.

Q. Were you there on a salary?

A. No sir; no definite salary.

Q. Did you have an interest in the business?

A. No.

Q. You worked without compensation?

A. No; but there was no specified salary named.

Q. Did you get any money?

A. Yes; I got some money.

Q. How much did you get during the five weeks?

A. About 50 or \$60.

Q. From whom?

A. From Mr. Easterday.

Q. Personally?

A. Yes sir.

Q. In cash?

A. Yes sir.

Q. How long have you known Mr. Easterday?

A. About four years.

Q. When did you first meet him, and where?

A. I met him when he had a firm in 42 Broadway under the name of W. W. Easterday & Co.

Q. And were you introduced by anyone?

A. I applied for a position there.

Q. Through whom?

A. I don't recall just now through whom I applied there.

1078 Q. How did you come to get employment with that company in Washington, that candy company, five weeks ago? How was that brought about?

A. Why, Mr. Easterday was interested formerly in the candy business, and he opened this store, and I was in Washington and he sent for me in fact, and I went down there to help him open the store.

Q. Where were you when he sent for you?

A. In New York, sir.

Q. Where?

A. At my home.

Q. Did he write you a letter?

A. I believe he sent me a telegram.

Q. Have you the telegram?

A. No sir.

Q. What did it say?

A. "Come to Washington regarding position," or something to that effect.

Q. Was that the day that Mr. Sullivan was arrested?

A. No; that was long after Mr. Sullivan was arrested.

Q. Why did he send for you just at that time, do you know?

A. Why, he knew that I was not doing anything, and he had a position down there for me.

Q. Does he own other candy stores, do you know?

A. No sir, I do not know.

Q. What other business is he engaged in?

A. None other outside of that, to my knowledge.

1079 Q. You say that you attended a meeting at the law office of Mr. Wompler in Washington; is that right?

A. Not no meeting, no sir.

Q. Well, you met Mr. Sullivan there?

A. Yes sir.

Q. And Mr. Easterday?

A. Yes sir.

Q. Will you please state what took place?

A. Why, we talked about different topics.

Q. Will you state what they were; what you talked about?

A. I cannot remember all the things we talked about.

Q. Well, to the best of your recollection?

A. It was nothing pertaining to the case whatsoever; but I just called there with Mr. Easterday, to the best of my knowledge, and seen Mr. Sullivan there.

Q. For what purpose?

A. Sir?

Q. For what purpose?

A. There was no purpose whatsoever; I just went there with Mr. Easterday.

Q. Well, you were not just going around making party calls?

A. Well, he wanted to see Mr. Wompler or Mr. Sullivan.

Q. About what?

A. And so he——

Q. (Interrupting.) About what?

A. I don't know, sir.

Q. Well, you were present during the conversation, were you not?

A. I was not present during the conversation he had with
1080 Mr. Wompler and Mr. Sullivan.

Q. Was Mr. Bowls present?

A. Not on that occasion, no sir.

Q. Well, on how many different occasions during the five weeks that you were in Washington did you have meetings or visits in Mr. Wompler's law office?

A. About three times at the most.

Q. Who was present on those various occasions?

A. Sometimes Mr. Bowls was there and Mr. Sullivan, and other times just Mr. Sullivan and Mr. Easterday would be there.

Q. Well, cannot you recall anything that took place at any one of those meetings?

A. No sir; they went into Mr. Wompler's private office.

Q. And you waited outside?

A. Yes sir.

Q. And you never heard any of the conversation?

A. No sir.

Q. Is Mr. Sullivan in business in Washington now?

A. Not to my knowledge.

Q. Or Mr. Bowls?

A. Not to my knowledge.

Q. Well, were they during those five weeks that you were there?

A. No sir, not to my knowledge.

Q. Did Mr. Sullivan send for you to go to Washington?

A. No sir.

1081 Q. Or Mr. Bowls?

A. No sir.

Q. Just Mr. Easterday?

A. Yes sir.

Q. Have you been away from New York at all outside of those five weeks, during the past year?

A. No sir—during the past what did you say?

Q. The past year.

A. Oh yes; I was out of town—you mean this year, 1920?

Q. Yes.

A. No, I have not been.

Q. 1919?

A. 1919 I was out to Washington.

Q. Where?

A. Washington. I first started with Sullivan & Company in Washington.

Q. When was that?

A. June and July I think.

Q. July of last year?

A. It may have been May, June or July.

Q. Some time in May, June or July last year?

A. Yes sir.

Q. How did you come to get employment with Sullivan & Company in Washington in May, June or July last year?

A. Through Mr. Bowls.

Q. How?

A. I have known Mr. Bowls for some time. I met him in New York here, downtown.

Q. Where?

A. Around Broad Street—Broadway and Exchange Place.

1082 Q. Just on the street?

A. Yes; I ran into him accidentally.

Q. Where were you working at the time?

A. I was working for the United States Food Administration.

Q. And he asked you to go to work for them in Washington?

A. Yes, he asked me.

Q. Now, as I recall it, you testified that about four years ago you received employment with Mr. Easterday at 42 Broadway?

A. Yes sir.

Q. How long did you remain there?

A. About a year, sir.

Q. Where did you go after that?

A. I don't just recall where I went after that.

Q. What is your best recollection of your next employment after you left Mr. Easterday's firm?

A. I think I worked for O'Connor Brothers, stock brokerage house.

Q. Where?

A. In 30 Broad I think.

Q. How long did you remain there?

A. About three or four months.

Q. Where did you go after that?

A. Then I think I went with the United States Food Administration.

Q. How long did you remain there?

A. I was with them a year and eight months.

Q. Under whom did you work?

A. Under whom?

1083 Q. Of the Food Administration?

A. I was employed in different departments there; had different heads. Mr. O'Brien was my last boss down there.

Q. Do you know his first name or where he can be found?

A. No sir, I don't know where he can be found.

Q. And you do not know his first name?

A. I know his initial; A. O'Brien, is all I know.

Q. What business was he in?

A. He had charge of the department I was in down there.

Q. Now, you know Mr. Easterday very well, do you not?

A. Yes.

Q. Can you say why you left at the end of a year?

A. Left where?

Q. Mr. Easterday.

A. He went into bankruptcy.

Q. What was your occupation with Mr. Easterday at that time?

A. Cashier.

Q. Were any accounts carried in your name?

A. No sir.

Q. Did you ever have a bank account in New York?

A. Savings account I had.

Q. Where?

A. Do I have to answer that?

The Commissioner: Mr. Myers, what is the connection between this witness and the bankrupt here?

Mr. Myers: This man was manager of Sullivan & Company, and the claim is that Sullivan & Company have assets belonging to the bankrupt estate.

The Witness: I beg to contradict you there; I was not manager of Sullivan & Company.

Mr. Myers: Cashier.

The Witness: Cashier.

Mr. Myers: Sullivan & Company have filed a voluntary petition in bankruptcy in Washington since the commencement of these proceedings, and they are completely linked up with this bankrupt, through confession which we have.

The Commissioner: I think you are going pretty far afield, Mr. Myers.

Mr. Myers: We are going no farther than the intricacies of these confederates carry us.

The Commissioner: You may state if you have a bank account, where is it, and stop there.

The Witness: I had an account in the Franklin Savings Bank.

The Commissioner: In the City here?

The Witness: Yes sir.

The Commissioner: That is the Franklin Savings Institution; is that what it is called?

The Witness: Yes sir.

1085 Q. Do you know the bankrupt in this proceeding, Nicholas Arnstein?

A. No sir.

Q. Didn't you ever see him?

A. No sir.

Q. Do you know Fannie Brice?

A. No.

Q. Do you know Phil. Kastel?

A. No sir.

Q. Do you know anyone by the name of George Wall, W-a-l-l?

A. I know an account we had by the name of George Wall.

Q. Who is George Wall?

A. I don't know, sir; I never met him.

Q. Did you ever have any correspondence with that man?

A. No sir, I have not.

Q. Well, was that a bona fide account, or a fictitious account on your books?

A. To the best of my knowledge it was a bona fide account.

Q. But you do not know who Mr. Wall is, and you never met him?

A. No sir.

Q. And you would not know where to find him?

A. No sir.

Q. You never had any communication with him during all the time that you were cashier for Sullivan & Bowls?

A. No sir.

Q. Do you know Elmer E. Steel, S-t-e-e-l?

1086 A. I know of the account.

Q. Well, who is Elmer E. Steel?

A. I do not know him.

Q. Did you ever meet him?

A. No sir.

Q. Did you ever have any communication with him of any kind?

A. The last day of Sullivan & Company there was a telephone call—I am not sure now whether it was from Steel or Enright, I don't remember; the party that called said they were Steel or Enright, about selling some securities in their account.

Q. Do you know Charles Enright?

A. No sir; I never met him.

Q. You never met any one of those three men?

A. No sir.

Q. But you believe that they represent living persons?

A. Yes sir.

Q. But you do not know their addresses?

A. We have the addresses on the books of them.

Q. Well, will you tell me where the addresses are; in what book do you want to see?

A. The top book right there. (Indicating.)

(Witness handed book indicated.)

The Witness: We have Elmer E. Steel here, Hotel Commodore; and Charles Enright, Hotel Commodore; and George Wall, 1087 2117 O Street, Washington.

Q. Did you meet Mr. Wall when you were in Washington?

A. No sir.

Q. You say that those persons exist, Wall, Steel, and Enright?

A. That I cannot say; all I know is we have accounts by those names, and they are supposed to represent customers.

Q. Don't you know that they do not exist?

A. Sir?

Q. Don't you know that there are no such persons?

A. I do not know that, no sir.

Q. Didn't you know that those were fictitious accounts that you carried?

A. Not at the time I did not know it, no sir.

Q. Do you know it now?

A. Well, afterwards, I have been questioned by Mr. Dooling, and he has told me they were fictitious accounts, yes sir.

Q. Didn't you know that those accounts stood for other persons?

A. No sir.

Q. Did you ever receive any checks from them?

A. From whom, sir?

Q. Any one of those three men?

A. No sir.

Q. Or did you ever send them checks?

A. No sir.

Q. Did you ever receive any letters from them?

1088 A. No sir.

Q. Or did you ever send them letters?

A. No sir.

Q. You had rather large dealings with those men, did you not?

A. Yes sir.

Q. Running into approximately how much?

A. Oh, I have no idea just how much it amounts to.

Q. Well, look at the book which you have before you; is that the blotter?

A. No sir; this is the customers' ledger.

Q. What is that; customers' ledger?

A. Yes sir.

Q. Now, will you please state the extent of the transactions with those three persons, Wall, Steel, and Enright?

A. Approximately, on this Wall account, it amounts to about \$200,000; Steel account about \$200,000; Enright, about \$300,000.

Q. Did you ever ask Mr. Sullivan or Mr. Bowls who these three men were?

A. No sir, I don't think so.

Q. Did they ever tell you?

A. No; they never told me who they were.

Q. Now, you realize that you are under oath, do you not?

A. Yes sir.

Q. And do you appreciate your answers?

A. Yes sir.

1089 Q. You say now that you were never told by your employers for whom those three accounts stood aggregating \$700,000 in transactions?

A. Well, I was told that they were Mr. Enright, Mr. Steel, and Mr. Wall.

Q. But you knew, did you not, that those persons did not exist under those names?

A. No sir; I did not know that.

Q. Weren't those unusual accounts for you to handle?

A. No sir.

Q. You knew all the other customers, did you not?

A. No sir, I did not.

Q. Didn't you communicate with all the other customers, either by letter or telephone or telegram or check?

A. Not all of them, no sir.

Q. Well, didn't you have to communicate with every customer in some such form?

A. Why, there was confirmations sent out of the trades, by bought and sold; just the trades each day, yes.

Q. Did you send confirmations to these men?

A. I did not send them personally, no sir.

Q. Do you know that they were sent? Did you see them go?

A. There is supposed to be one sent to every customer if he buys or sells any stock during the day.

Q. Did you see any confirmations go out to Wall, Steel or 1090 Enright?

A. I believe I seen them made out by the typist.

Q. You know that they did not go, don't you?

A. No sir, I do not know that.

Q. Don't you know that it was common knowledge around your place of business that these three accounts were fictitious and represented accounts of other persons?

A. No sir, they were not.

Q. When was the account with Wall opened?

A. October 14th 1919.

Q. When did you firm fail?

A. November 17th, to the best of my recollection.

Q. How was this account opened; with what transaction?

A. It was opened by him purchasing 100 shares of United States Steel.

Q. Did he pay for it by check?

A. No sir; he deposited collateral against that purchase.

Q. What collateral?

A. 200 shares of Atlantic Gulf & West Indies; and 300 shares of St. Louis & San Francisco.

Q. What became of that collateral?

A. They were deposited in loans in banks.

Q. Where did that come from?

A. Sir?

Q. Where did that collateral come from; from whom?

1091 A. From Mr. Wall.

Q. Did he hand it to you?

A. No sir; he deposited it with our Washington manager.

Q. Who is he?

A. Mr. Drain.

Q. How do you know he deposited it there?

A. His letters to that effect in our files, that he did.

Q. You mean Mr. Drain wrote to the New York office—

A. (Interrupting.) Acknowledging receipt.

Q. (continued). —that he had received that collateral from Mr. Wall?

A. Yes sir.

- Q. But you never had any letter from Mr. Wall?
A. No sir.
Q. And you only know that from Mr. Drain's letter?
A. Yes sir.
Q. Now, was any of that collateral claimed to have been stolen?
A. When do you mean, sir?
Q. Did you at any time while you were working for Sullivan & Company, hear a claim that that collateral deposited to the Wall account was stolen securities?
A. No sir.
Q. You never heard of that?
A. No sir.
Q. You have not heard of it since?
A. Oh yes.
Q. From whom?
A. I have heard it up in the District Attorney's office.
- 1092 Q. Now, did the collateral come by registered mail from your Washington office?
A. No; I believe Mr. Bowls made a loan on that in Washington, with a Washington bank.
Q. Then this collateral never came to the New York office at all?
A. Wait; I will make sure of that, sir. (After referring to book.) No sir, that never came to New York.
Q. What account are you looking at now?
A. Our loaned account.
Q. What you know about that collateral, 200 shares of Atlantic Gulf & West Indies, and 30 shares of St. Louis did you say?
A. Yes; St. Louis & San Francisco.
Q. What you know is that Mr. Drain wrote your New York office that they had received that amount of collateral from Mr. Wall?
A. Yes sir.
Q. And you thereupon credited Mr. Wall's account with the 100 shares of U. S. Steel?
A. No; we did not credit him; we debited him with that. That was a purchase.
Q. Did you buy the steel?
A. Yes sir.
Q. From whom? Does that appear?
A. I believe—
Q. (Interrupting.) Well, does that appear on your books?
A. No; it don't appear here, sir.
- 1093 Q. Well, what book will show that? Your books will show from whom you purchased that, won't they?
A. I believe it was purchased from Secor-Weil.
Q. And what book shows that?
A. You have not got the book here that shows that.
Q. State what it is and we will get it; what book is it; ledger, or journal, or cash book?
A. We had a special—it was not a book; it was just a lot of those sheets fastened together, that we kept for our account with Secor-Weil.

Q. How do you spell that?

A. S-e-c-o-r W-e-i-l.

Q. Where are they?

A. 115 Broadway I believe.

Q. Is there a record in any book that you know of, of the purchase of that 100 shares of steel from Secor, Weil & Co.?

A. Let me see that blotter; I may find some record in there.

(At this point the examination of this witness was temporarily suspended.)

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

1094 DAVID F. BROWDER, recalled.

Examined by Mr. Myers:

Q. (Question read as follows:) Is there a record in any book that you know of, of the purchase of that 100 shares of steel from Secor, Weil & Co.?

A. (After examining blotter.) No; I do not see any record of that purchase in this book.

Q. How do you explain that transaction then?

A. You see, all the stock we bought from Secor, Weil, bought and sold from Secor, Weil, we received the following morning confirmation of all the stocks bought and all the stocks sold; and we kept special sheets attached; we made those entries. Now, I do not see those sheets here; I don't know what became of them; but Secor, Weil sent us at the end of every month an itemized statement of the month's transactions.

Q. When did you start your transactions with that firm?

A. We started as soon as we opened up our New York office.

Q. When was that?

A. That was some time in the latter part of August we opened up the account with them; August or September 1919.

Q. Cannot you tell what month you started in business in New York?

A. Well sir, I do not know offhand; I would not be able to tell you unless I seen——

Q. (Interrupting.) What book will tell you that?

A. I don't see it here, sir.

Q. When you started business?

A. Sir?

Q. I want to find out when you started business in New York.

A. Oh, in New York? Let me see that other blotter.

(Counsel hands witness book.)

The Witness: The first trades that we made on the Consolidated Stock Exchange was under September 24th, 1919.

Q. And how long did you continue in business in New York?

A. Until November.

Q. What date?

A. November 18th.

Q. That is less than two months?

A. Yes sir.

Q. How many customers did you have in New York during those two months?

A. I can tell from that book. (Indicating.)

(Counsel hands witness book.)

The Witness: Eleven accounts in New York.

Q. Will you read them please?

A. You mean the names?

Q. Yes.

A. It starts with New York Account 4, Samuel Smerling.

Q. Will you spell that please?

A. Samuel S-m-e-r-l-i-n-g.

1096 Q. Where was he located then?

A. 1718 Pitkin Avenue, Brooklyn. Account No. 5 is A. Smerling, 1181 Eastern Parkway, Brooklyn. Account No. 6 is Elmer E. Steel, *Hotel Commodore*. Account No. 7 is Charles Enright, *Hotel Commodore*. Account No. 8 is H. Stadler.

Q. Where was he, or where is he?

A. We have no address of him; we have just got here "In care of New York office."

Q. Didn't you ever meet him?

A. Stadler? I don't know whether I met Stadler; I met a few of the customers here.

Q. What?

A. I met some of them here in New York; I didn't meet them all.

Q. Is that a correct name, or is it a fictitious name?

A. Oh, here is his address: Stadler Shoe Company, 1718 Pitkin Avenue. There is Account No. 9, Hyman Slupsky, care of the Stadler Shoe Company, 1718 Pitkin Avenue, Brooklyn. Account No. 10 is P. Stadler, care of the same address. Account No. 11 was A. Weitsen, 571 Nostrand Avenue, Brooklyn.

Q. Is that all?

A. Yes sir.

Q. Those are only eight accounts; is starts with No. 4 you say?

A. Yes; the other three accounts must have been closed out and the sheets must have been taken out of that book.

1097 Q. Who are they?

A. I could not tell you.

Q. Look at all the books and then answer. Which other books do you need to look at?

A. (After referring to other books.) I don't see the other three accounts, sir.

Q. What other books do you need to look at?

A. This would be the book that would tell me, the customers' ledger.

Q. What do you remember without the books?

A. I don't remember the names of them.

Q. How?

A. I cannot remember the names of them.

Q. Look at the check book and see whether that will help you. What books have you examined so far?

A. I have examined this customers' ledger, and this book here, the margin book.

Q. Customers' ledger, margin book; what other books?

A. That is all so far.

Q. Now take the check book.

A. You see, as these accounts were closed out, the sheets were taken out of the book.

Q. Well, but when these persons were trading, their transactions were entered in more than one book; isn't that so?

A. Yes; but before we opened our New York office we were corresponding with a firm, another Consolidated Stock Exchange 1098 firm.

Q. By what name?

A. H. T. Greenwood & Company.

Q. Where?

A. No. 7 Wall Street.

Q. Are they still in business?

A. I think so, yes sir.

Q. Yes; but when you came to New York you testified you started with eleven accounts, or had eleven accounts.

A. I did not say we started with eleven accounts.

Q. Well, you had eleven accounts during the sixty days or so that you were in business in New York?

A. Yes sir.

Q. You have only give me the names of eight?

A. Yes sir.

Q. Won't you please give us the names of the other three accounts?

A. I cannot, sir.

Q. Look at all the books and then answer. Look at the purchase and sales book (handing witness book).

A. Here is New York No. 1, is J. D. Longley; I have no address though of him.

Q. Spell that please?

A. L-o-n-g-l-e-y.

Q. Is that a real account or a fictitious account?

A. That is New York 1 account.

Q. Who is he?

A. J. D. Longley.

Q. Who is he?

A. I don't know the man.

1099 Q. Did you ever meet him?

A. I don't think so, no sir.

Q. Well, did you ever correspond with him?

- A. There was confirmations of sales sent to him.
Q. Well, did you ever correspond with him?
A. Personally, no; I don't think I did.
Q. Did you ever talk with him?
A. No sir.
Q. You would not know where to find him?
A. No sir.
Q. And you never did know?
A. We had an address no doubt when we sent out confirmations to him.
Q. Where is the address in the books?
A. I don't see it; I am explaining to you the customer's sheet is not there.
Q. What was No. 2?
A. Here is New York 3, D. Collins.
Q. What is his address?
A. I have no address here showing; this is just the account numbers and the names. Here is New York 2, N. C. Tribby.
Q. What is his address?
A. I have no address shown.
Q. I would like to see whether I have this straight, Mr. Browder: There are eleven accounts; is that right?
A. Yes sir.
Q. And three are Wall, Steel, and Enright; is that right?
A. Yes sir.
1100 Q. Wall is not in there at all, is he?
A. No—Wall is a Washington account.
Q. Well then, of those eleven, two are represented by Steel and Enright; is that right?
A. Yes sir.
Q. And three by Longley, Tribby, and Collins; is that right?
A. Yes sir.
Q. And you do not know any one of those five persons?
A. I do not know any of the——
Q. (Interrupting.) Well, let's stick to those five.
A. No; I don't think I have met any of those three persons.
Q. You never did?
A. Those five persons, at least. No.
Q. You could not describe them?
A. No sir.
Q. You never have met them?
A. No sir—pardon me a minute. Do you understand the position of a cashier in Wall Street?
Q. Well, you explain it.
A. Do you know a cashier in the bookkeeping cage is caged off from the other rooms; we are in a room all by ourselves, where we very seldom come in contact with the customers.
Q. State everything you wish to state now.
A. I am just explaining that to you; you do not seem to understand that.

1101 Q. Well, I want to learn that now; explain that fully to the stenographer.

A. A cashier is busy each day making deliveries of different stocks, and accepting different stocks from different brokers on the Street. He has no time to mingle with the customers or talk to the customers. They generally have a customers' man to interview the customers.

Q. Well now, you enter the transactions on your books for these five persons, did you not?

A. Yes sir.

Q. Now, of the remaining of the eleven accounts, five were at the Pitkin Avenue address; is that right, connected with the Stadler Shoe Company, or Smerling; is that right?

A. Yes sir; you have got those.

Q. That takes in five more, doesn't it? Then the sixth was this man on Nostrand Avenue; that constituted all the customers?

A. Yes sir; in New York.

Q. Now which ones of those eleven customers did you come in personal contact with?

A. I met the Smerling brothers; those are about the only two I remember.

Q. You received shares from them and delivered shares to them?

A. I received checks and things too, in payment of the accounts, you know; when they bought stock on margin I received their checks and so forth.

1102 Q. Now, did you ever receive any checks from the Stadler Shoe Company, or anyone connected with it?

A. Yes; I received a check from Stadler; I believe it was signed H. Stadler.

Q. Did you meet H. Stadler at any time?

A. No, I don't think so.

Q. Or anyone connected with that company?

A. I don't remember meeting any one of them.

Q. What you are sure about is that you never came in personal contact with Steel or Enright or Longley, Tribby, or Collins?

A. No sir.

Q. Never had any check from them?

A. Yes; I had checks from them.

Q. From which ones?

A. Longley.

Q. Will you show me where that was recorded?

A. Sir?

Q. Will you show me on the books the check transactions with Longley?

A. Here is a check received from J. D. Longley on 9/13/19, which is September 13th.

Q. Was that deposited?

A. Yes sir.

Q. Will you show me that please in the check book?

A. No sir; I don't see that check book here. We had an account before this Bankers Trust Company, the Empire Trust Company, at 120 Broadway. That check book I don't see here.

1103 Q. Will you show me in any of the books that you have here, any checks drawn by Sullivan & Company, either to Mr. Steel or to Mr. Enright or to Mr. Wall?

A. October 17th (indicating).

Q. Mr. Steel is that?

A. George Wall, \$15,000.

Q. That was signed by whom?

A. I could not tell you that. There was two signatures was on those checks; either Mr. Bowl-s or Mr. Sullivan.

Q. Either one could sign?

A. Either one.

Q. There is nothing to indicate who signed that?

A. No sir.

Q. Is there anything to show who got it?

A. No sir; all it shows here is given to George Wall; the stub is marked "George Wall."

Q. Have you got the check?

A. No sir.

Q. Where is the check?

A. I don't know sir; it is not attached here.

Q. You say that check went to George Wall?

A. That is what my stub says here, "George Wall."

Q. Well, what is the fact?

A. I did not hand any money personally to any of the men.

Q. Didn't you hand money to the Smerlings?

A. No sir.

Q. Didn't you ever hand any checks or moneys to any of
1104 the Stadlers?

A. I very seldom handed money to anyone of the customers. I generally passed all to either one of the partners, or to some man in the office there, who generally would hand it to the customer.

Q. What connection did Mr. Easterday have with that business?

A. I don't know of any title that he had in the firm, but I know he was there.

Q. All the time?

A. Well no, not all the time.

Q. Most of the time? In the customers' room?

A. Yes sir, he was in the customers' room.

Q. Was he running the business?

A. Sir?

Q. Was he in charge of the business?

A. Not to my knowledge, no sir.

Q. Didn't he sign checks?

A. Yes, he signed some checks.

Q. Did he ever sign Mr. Sullivan's name to checks?

A. Yes, I believe he did.

Q. Did he ever sign Mr. Bowls' name?

A. I don't remember him signing Bowls' name.

Q. Did he sign that 15,000 dollar check?

A. That I could not tell unless I seen the check with the signature.

Q. Well, did this firm of Sullivan & Company go out of business in New York?

A. Did they go out of business?

1105 Q. Yes.

A. Why yes, when the books and all were seized by the District Attorney's office.

Q. When was that?

A. About November 17th.

Q. What became of the canceled checks?

A. That I do not know, sir.

Q. Who had custody of the canceled checks?

A. Here is canceled checks here (indicating checks attached to stub of check book).

Q. Look at the 15,000 dollar check, will you, about which you have just testified.

A. These canceled checks here are all attached to the stubs, you see (indicating).

Q. Will you let me have it please?

A. (Witness hands counsel check book.)

Q. Did you cash the 15,000 dollar check about which you have just testified?

A. I don't remember. I cashed quite a few checks for big amounts.

Q. To whose order were those checks made?

A. Mostly cash.

Q. And who signed them?

A. Why, it will show you there in the book I think.

Q. (Counsel hands witness check book.)

A. Those checks are not here, sir.

Q. Do you know Nicholas Arnstein at all?

A. No sir.

1106 & 1107 Q. Do you know Nick Cohen?

A. No sir.

Q. Or Frank Parnell?

A. No sir.

Q. Joseph Gluck?

A. No sir.

Q. Do you know what connection Mr. Easterday had with Arnstein?

A. No sir.

Q. Did you ever discuss the name of Nick Arnstein at all with Mr. Sullivan or Mr. Bowls?

A. Never heard of the name before the statements came out in the papers.

Q. Or J. W. Arnold?

A. No sir; never heard of the name at all.

Q. Now, I show you a stub check entry here, November 17th, to W. L. Carpenter, \$3,908.79; who is Carpenter? (Indicating entry.)

A. They are a firm on Wall Street; members of the Stock Exchange I think.

Q. What was that transaction?

A. That was a transfer—that did not go through though. That was a transfer of an account—a customer's account that they held, that the customer wished transferred to our firm.

Q. Will you state the name of the customer?

A. There is the name right there (indicating).

Q. Thornton?

A. Thornton.

Q. Will you state what this deposit of \$48,457.50 means on November 17th, 1919? (Indicating.)

1108 A. It showed right there, that that was a check ofr Secor, Weil, that was received from Secor, Weil, on our account.

Q. What was that for?

A. That was for stocks that we sold to them.

Q. What stocks?

A. I don't remember what it was.

Q. Will you look at the books, and then testify, please?

A. That I explained before, that book is not here that we kept that Secor, Weil in.

Q. Well, do you know what became of it?

A. No sir, I do not. There was a lot of loose sheets, you see, just fastened together. When Mr. Sullivan was arrested on the 17th, they brought me right up to the District Attorney's office, and I was up there for some days after that.

Q. You are not able to say with or without the books, how that item of \$48,457.50 is made up?

A. (After referring to blotter.) Here is the 17th: Sold Secor, Weil 100 shares of Goodrich; 100 shares of American Car Foundry; 200 shares of Union Pacific; 200 shares of A. I. C. That amounted to \$69,225. Then we sold 20 B. S. (b); 60 shares of Steel; 90 shares of Baldwin; 10 shares of Pan-American; 10 shares of Pierce Arrow; and 40 more shares of B. S. (b); that amounts to a total of \$92,521.25. That is that check you are asking about.

1109 Q. Were any of those shares collateraled to anyone's account?

A. Yes sir.

Q. To whose account?

A. Charles Enright.

Q. Which one; all of them?

A. No sir; 100 shares of Goodrich, and 100 shares of American Car Foundry, 200 shares of Union Pacific, and 200 shares of A. I. C.

Q. Well, those shares were up as collateral on moneys which were owing by Enright to the firm?

A. They were put up as collateral in that account.

Q. Then you took those figures and pledged them with Secor, Weil & Company?

A. No; we sold them out through Secor, Weil.

Q. And was the money handed to Enright?

A. No sir.

Q. Well, did you receive written instructions from Enright to sell him out?

A. That is the day I had reference to before, when I said I received a telephone call.

Q. Who telephoned you, do you know?

A. This party said he was Charles Enright.

Q. You don't know who it was?

A. No sir; as far as I know, it was Charles Enright.

Q. You never heard his voice before?

A. No sir, not to my knowledge.

Q. You got the message yourself?

1110 A. Yes, I got it myself.

Q. And not know the voice even, you undertook to sell out all of his stock?

A. Not all of it; I just told you that stock here that I sold.

The Commissioner: Was that an unusual thing to happen?

The Witness: Why, I done that, sir, he told me just what stock—

The Commissioner (interrupting): No, no; answer the question.

(Question read.)

The Witness: No; in Wall Street it is a habit of customers calling up and selling out their stock.

The Commissioner: Without recognizing the voice of the person that calls you?

The Witness: He gave me his name and everything.

Q. You testified before, didn't you, that you never knew who Enright was?

A. Yes sir.

Q. That you had never written to him or telephoned to him or telegraphed to him?

A. Yes sir.

Q. And never received a letter, telephone, or telegram from him; is that right?

A. Yes sir.

Q. Or a check?

A. Yes sir.

1111 Q. So far as you know, the man never existed up to that time?

A. I didn't say that he did not exist; I said that I did not know the party. He existed so far as our records are concerned.

Q. Then suddenly, on the day that you were going out of business and the District Attorney was seizing your books, on that day for the first time you hear from a man who said he was Enright?

A. No sir; that was not the day they seized; that was the day before they seized.

Q. The day before; that was the first time you ever heard from Enright; is that right?

A. Yes sir.

Q. And he said "I am Charles Enright"?

A. Yes sir.

Q. And you did not know who he was?

A. No.

Q. And he told you to sell all those shares of stock?

A. Yes sir.

Q. Did he give you the prices?

A. He asked me the prices of those stocks, what the prices were at the market at the time.

Q. Where had those shares come from originally?

A. I received them, I believe, from Mr. Sullivan.

Q. By hand?

A. Yes sir.

Q. Where were they kept?

A. In our safe in the office.

Q. How long had they been there?

1112 A. About two or three days I think.

Q. Did Mr. Sullivan say where he had received them?

A. Well, they were all credited to this Charles Enright account.

Q. Well, did he say where he received them?

A. No. He told me he received them from Enright; that is all.

Q. Two or three days before the crash?

A. Yes sir.

Q. You kept them in the safe all that time?

A. Yes sir.

Q. Who had access to the safe?

A. I was the only one—we had a special compartment there with a key, and I was the only one that had the key.

Q. You and Mr. Sullivan?

A. No; I was the only one—to my knowledge I am the only one that had a key to that compartment.

Q. Did Mr. Easterday ever have a key?

A. No sir. That was not the only stock I have had on hand; I have turned over to the District Attorney's office about 700 shares of other stock too.

Q. Of what value?

A. I think it was 200 shares of Union Pacific in it too that I still held in the box when the officers came down there, and I turned all those books and papers over to them.

1113 Q. Is there anything to show the numbers of all this stock that you had in the name of Enright?

A. Certificate numbers?

Q. Yes.

A. Yes; they are all right here.

Q. They are all entered in that book?

A. Yes sir.

Q. Does that show where they originally came from; from what concerns?

A. No sir; this shows from whose account we received this stock, see? (Indicating.)

Q. How much stock all together did you have collateraled to Enright's account during the 60 days that you were in business in New York?

A. Oh, quite a lot; our loan account will show you.

Q. Will you read it all off; all the stock that you had for the account of Enright?

A. (Reading from customer's ledger) 100 shares of U. S. Food; 100 shares of Pond Creek; 100 shares of A. R. common; That is American Smelters, common; 300 shares of Pennsylvania; 100 shares of Endicott-Johnson; 50 shares of Reynolds Tobacco, Class B; 100 shares of American Smelters, Preferred; 100 shares of A. F.; 200 shares of Denver & Rio Grande, Preferred; 100 shares of Wheeling and Lake Erie; 100 shares of Goodrich; 200 shares of American International; 47 shares of Union Pacific. That is all from Charles Enright's account.

1114 Q. How much does that amount to all together?

A. That amounts to—I do not know the present market value.

Q. No; at that time.

A. Approximately I guess three or \$400,000.

Q. Three or \$400,000?

A. Yes sir.

Q. Now, did you have physical possession of all those certificates?

A. Not of all of them, no sir.

Q. Well, which ones?

A. Well, that Reynolds Tobacco; American Smelters, Common; 100 shares of Endicott-Johnson; 100 shares of A. R. Preferred; 100 shares of Pond Creek; 100 shares of U. S. Food, and 300 shares of Pennsylvania; that was received in the New York office and a loan was obtained on it from the Seaboard National Bank for \$55,000.

Q. When?

A. On October 27th.

Q. Do you know where it was received, all this stock, from whom?

A. From Enright all that was received.

Q. Well, Enright did not hand it to you at all, did he?

A. No sir.

Q. Well, who did you get it from?

A. I got most of that stock from Mr. Sullivan, in these Charles Enright and Steel accounts.

Q. Now, how much stock did you get all together from Mr. Wall?

1115 A. I received from Mr. Wall—on Wall's account I received 100 shares of Atlantic Gulf & West Indies; 100 shares of United Retail Stores; that is all the stock I received on the Wall account.

Q. What was the value at that time of all the stock you received for Wall's account?

A. About \$40,000.

Q. And for Steel's account?

A. I do not think I received any stock on the Steel account in New York; that is, I did not have it in the box. This stock was received and pledged with the Franklin Trust Co. on Steel's account.

Q. Wasn't all the stock which was credited to Steel's account claimed to have been stolen?

A. All of it, sir?

Q. Yes.

A. I don't know about that. I heard of some there, some of this Crucible was supposed to be stolen; that is all I know. That was proved by Mr. Dooling; that is all I know.

Q. How much money was paid out of the New York office to Steel, Wall, and E-right?

A. About \$12,200 was paid to Steel; 16,000 was paid to Enright; about \$26,000 was paid to Wall.

Q. When you say that this was paid to Wall, you mean checks were drawn to the order of Wall?

A. Yes sir. It may have been drawn to cash.

Q. But you do not know that any of those moneys were
1116 ever paid over to Wall, Enright, or Steel, do you?

A. No sir; I never handed it to them personally, no sir.

Q. I find a lot of checks in here signed in blank; is that correct?
(Indicating check book.)

A. Yes sir; that was signed in blank.

Q. How many; a large number?

A. Yes sir; sometimes it was thirty or more checks signed in blank.

Q. Who signed them?

A. I think that is signed by Mr. Easterday.

Q. All of them were signed by Easterday?

A. Yes sir.

Q. Was Easterday running this business, or Mr. Sullivan?

A. Sullivan and Bowls are the only partners that I knew of in the business, sir.

Q. But Easterday signed the checks?

A. Yes, he signed these checks, sure.

Q. Didn't he sign most of the checks in the New York office?

A. That is the only bank account we had.

Q. Yes; but aren't all the checks there drawn by Easterday and not by Sullivan?

A. No; they had Mr. Bowls' signature there too; some were signed by Bowls.

Q. Now, Easterday sent out letters and signed Mr. Sullivan's name, isn't that so?

A. I think he did, yes sir.

Q. And did he ever represent to people calling there that
1117 he was Mr. Sullivan?

A. I never heard him personally say that, no sir.

Q. When people came in and asked for Mr. Sullivan, didn't Mr. Easterday say that he was Mr. Sullivan?

A. He would go out and interview them; but I don't remember him saying that he was Mr. Sullivan.

Q. Do you know McNey, Grant & Company?

A. James McNey?

Q. Yes.

A. Yes sir; I heard of them.

- Q. Who is he?
 A. I know of a James McNey; I don't know where he is now.
 Q. What business is he in?
 A. He was on the Curb there at one time.
 Q. Do you know where he works?
 A. No sir; I do not.
 Q. Are you very friendly with him?
 A. No sir.
 Q. When did you see him last?
 A. I have not seen him in I guess eight months almost; six or eight months.
 Q. Did he have any business with Sullivan & Company at all?
 A. No sir.
 Q. Now, Mr. Easterday introduced you to Mr. Bowls, did he not?
 A. Yes sir; that is how I met Mr. Bowls.
 Q. Who is W. D. Williams?
 A. I don't think I ever met the man in person. I have heard of him; he is some man from Philadelphia or Washington,
 1118 where he comes from.
 Q. Is he the man with a chain of stores?
 A. Chain of stores, in what?
 Q. Any way.
 A. I don't know that.
 Q. Has Mr. Easterday a chain of stores?
 A. No sir, not to my knowledge.
 Q. Don't you know who Williams is?
 A. I heard that he was an inventor.
 Q. You don't know where he lives?
 A. Either Philly or Washington; I am not sure.
 Q. You don't know what address?
 A. Yes sir.
 Q. Did he ever have any business dealings with Sullivan & Company?
 A. I think he had some personal dealings with Mr. Sullivan.
 Q. Do you know what the nature of them was?
 A. No sir, I do not.
 Q. Who is R. M. Newman?
 A. R. M. Newman is a lawyer down here, downtown, 20 Broad Street.
 Q. Was he the lawyer for Sullivan & Company?
 A. He did have some—he took care of some legal matters here; I don't know just what it was.
 Q. Did Sullivan & Company have their office with Newman at any time?
 1119 A. At first when we opened up, yes, before we could get any space in New York, we were compelled to take temporary quarters there.
 Q. You took them in Newman's law office?
 A. We took a small room from him, yes sir.
 Q. Is Mr. Newman attorney for Easterday?
 A. I believe he is, yes sir.

Q. Who is Michael Drain?

A. Michael P. Drain; he is the Washington manager.

Q. D-r-a-i-n?

A. D-r-a-i-n, yes sir.

Q. Did you see him when you were in Washington this last time?

A. Yes sir.

Q. Frequently?

A. No sir, not frequently; I seen him on three or four different occasions.

Q. Who is Danny Jacobs?

A. He is one of the bookkeepers in the New York office here.

Q. When did you see him last?

A. I have not seen him since December I guess.

Q. Do you know Phil. Kastel?

A. No sir.

Q. Do you know Goldberg & Heim?

A. Yes sir.

Q. Did you have business with them?

A. Yes sir.

Q. What kind of business?

A. We bought and sold stocks to them, like any other member of the Consolidated.

Q. Are they entered on your books?

1120 A. I think they are. I will see. (After referring to books.) You know, we had a broker on the Floor, and we would call him up on the telephone and say "Buy so and so," or "Sell so and so," and he would go out——

Q. (Interrupting.) Who was your broker on the Floor?

A. Mr. Bowls was our Floor member; he was on the Floor for a time.

Q. Of the Consolidated?

A. Yes sir. Afterwards we paid a broker on the floor to execute our orders.

Q. Who did you pay?

A. I just forget his name. I have just got his initials here: H. S.

Q. You don't know the name?

A. I know it, but I just forget it.

Q. Will you give the names of the different concerns with whom you dealt during that period?

A. Oh, if I gave you all that I would have to go through the whole book; on some of the pages here alone there are 50 names. (Indicating.)

Q. About how many are there?

A. The same name may be entered four and five times on the same page, of different transactions.

Q. Well, approximately one hundred different houses?

A. We would deal with any broker on the Floor down
1121 there; it all depends——

Q. Who did you have most of your dealings with? Goldberg & Heim?

A. No one in particular; it all depends on how many memberships there are of the Consolidated. We traded with anyone that wanted to buy the stock at our price, we would sell it to them.

Q. Do you know Louis Bleet?

A. No sir; never heard of him.

Q. Do you know Marcus Heim?

A. Yes.

Q. E. P. Strong?

A. Yes.

Q. What dealings did you have with E. P. Strong?

A. Same as any other broker.

Q. What are they? Show me the transactions with E. P. Strong.

A. If I do I will have to go through the whole book here and pick out each item here. Look at this book and see the different names there. (Indicating.)

Q. Where is E. P. Strong?

A. You want me to look for each item here?

Q. Well, I want to know whether you know where E. P. Strong is now.

A. His office?

Q. Yes.

A. No; I don't know where he is located.

Q. What address did you have?

A. That I could not tell you, because—

1122 Q. (Interrupting.) Were his transactions extensive?

A. No sir, I don't think so.

Q. When did he start with you?

A. He did not start with us; he was not connected with us.

Q. No; I mean when did he start to buy or sell with you?

A. Oh. That I don't remember outright here, because there are so many different houses we bought and sold to here.

Q. Well, he is a lawyer, isn't he, E. P. Strong?

A. E. P. Strong? Oh, I thought you meant—I think there is a man on the Floor of the Consolidated by the name of Strong; that is who I thought you meant. I don't know E. P. Strong, the lawyer.

Q. A lawyer; you do not know him?

A. No sir.

Q. Do you know Sam Ginsberg?

A. Ginsberg? No sir, I don't think so.

Q. Did you ever have any dealings with him, either for yourself or for the firm of Sullivan & Company?

A. No sir; I don't remember that name.

Q. Do you know S. Charles Sugarman?

A. What name?

Q. Sugarman.

A. I know J. G. Sugarman & Company in Wall Street. He is a member of the Consolidated too.

Q. Do you know Paddy Goldberg?

A. No sir.

1123 Q. Or Roughy Ginsberg?

A. No sir.

Q. George W. Qualey?

A. No sir.

Q. Carl Snyder?

A. No sir.

Q. Harry Propper?

A. No sir.

Q. H. Morgan Pollock?

A. No sir.

Q. John McKettrick?

A. No.

Q. Did you ever have any dealings with any of those people?

A. No sir.

Q. Either for yourself or for the firm of Sullivan & Company?

A. No sir.

Q. After you had this transaction with Mr. Wall on the telephone—do you know what transaction I refer to?

A. No sir.

Q. The transaction where he called up and asked you to sell out—or was that Enright?

A. That was not Wall.

Q. Enright?

A. Wait till I see. (After referring to book) Enright.

Q. Now will you please state the date; November 14th was it?

A. The 17th.

Q. That was the day before the crash?

A. Yes sir.

Q. After you sold all the stock did you report back to Enright?

A. Confirmation was made out of all those trades, as far as I remember, but they were never mailed.

1124 Q. Well, that transaction involved about \$70,000, did it not?

A. About \$60,000.

Q. Didn't Mr. Enright inquire as to what disposition you had made of his stock?

A. No sir; I did not receive any telephone from him after that.

Q. And you never reported it to him?

A. No sir.

Q. You never heard from him before that day, or since?

A. No sir.

Q. And you don't know where he is now?

A. No sir.

Q. You never did know?

A. No sir.

Q. You are telling the truth?

A. Yes sir. You know that same day I was called up about these stocks from Secor, Weil.

Q. Well, what did they say?

A. They told me that they had a report that some of this stock

was stolen, and I should return back to them the check on this stock. When I heard it was stolen stock I returned it to them.

Q. Tell us everything they said at that time.

A. They just called me up—they called me up first and said they were just after giving one of my runners a check for something like \$20,000, and they wanted for me not to deposit the check, but send it back to them. So when my runner came back, it was a check of \$48,000, one check of 48,000 some odd hundred dollars.

1125 And I said there must be some mistake; I had no check coming from them for \$20,000. So I tried to deposit it; so they would not take the deposit; the bank would not take the deposit; the boy came back. And I went down to see what the trouble was at the bank. So I seen some officer there in the bank, and he told me—he referred me to their attorney, and their attorney said—

Q. (Interrupting.) Who did you see in the bank?

A. I don't know his name; it was one of the officers.

Q. What was the name of the attorney?

A. I don't know that either. He referred me to a room number upstairs.

Q. Who did you talk to at Secor, Weil?

A. Wait; I will explain it.

Q. Yes; go right ahead.

A. And that attorney told me that Secor, Weil had stopped our account; and I called up Secor, Weil and asked the reason of all this, when they told me that some of this stock was reported to them as stolen; and they sent over for this check. So the party they sent over, I was not going to give it to him, and I did not give it to him; and one of the partners of Secor, Weil came over—

Q. (Interrupting.) Who was that?

A. Mr. Secor himself came over and asked me to come over
1126 to their office. That was the evening of November 17th, about—it was after the close of the market; perhaps half past three or a quarter to four. And I went over to their office, and then they explained the whole matter to me. "Well," I said, "if that is stolen stock and all, I have no right to that check." And I gave them back the check of 48,000 odd dollars.

Q. Didn't you discuss the matter with Mr. Sullivan?

A. Mr. Sullivan was out of town.

Q. Where was he?

A. He was in Philadelphia.

Q. Where in Philadelphia?

A. I don't know where in Philadelphia.

Q. How do you know he was in Philadelphia?

A. Because I have heard from him. He told me he was going to Philadelphia, before he went. After he got there I heard from him.

Q. When did you hear from him? Where was he in Philadelphia?

A. In Philadelphia.

Q. Where?

A. I don't know just where, because he called me up on the 'phone.

- Q. He did not say where he was?
A. No, he did not say.
- Q. Where was Mr. Bowls at the time?
A. In Washington, sir.
- 1127 Q. Where?
A. In our Washington office.
- Q. Where was Mr. Easterday?
A. Well, he was not around the office for a week or more before that, I don't think.
- Q. Where did he go to?
A. I don't know, sir.
- Q. Did he keep in touch with you?
A. No sir.
- Q. You did not hear from him at all?
A. No sir, not that time.
- Q. After he left the office, left New York, you did not hear from him at all?
A. No sir.
- Q. Where was Mr. Steel?
A. As far as I know, he was in New York.
- Q. Mr. Enright?
A. I did not hear anything from Mr. Enright at all.
- Q. Or Mr. Wall?
A. Wall I have not heard from.
- Q. What was the condition of Mr. Enright's account when he called up and asked you to sell some of his stock? Read it for me.
A. He was perfectly covered—you mean on margin, don't you?
- Q. To what extent?
A. I don't remember just the figure exactly.
- Q. Look at the books and then testify.
A. I could not tell you that, because I have not got the
- 1128 prices at that time when he called up, that day; it was figured up.
- Q. Won't your books show?
A. No sir, they won't show. The margin is kept every day.
- Q. How much did he owe, according to the books?
A. He did not owe us anything. We owed him money.
- Q. How much did you owe him?
A. Oh, it amounted into the thousands; I don't know just exactly the amount.
- Q. I beg pardon?
A. I don't know just the exact amount.
- Q. Well, what is your best recollection?
A. My best recollection is that if he sold out all of his stocks and wanted a check in payment for all the stock he sold, why I guess it would amount to \$80,000; maybe \$100,000.
- Q. Now, did you place the prices of the sale, or did Mr. Enright?
A. What?
- Q. Who placed the prices at which you were to sell that stock on the 17th?
A. He gave me a market order on them.

Q. What time was that? What time in the morning?

A. I think it was before noon hour; I don't remember the correct hour.

Q. He told you to go right out and sell that at the market?

A. He asked me first the present market price for it; and I went out to our board and looked it up, and I gave him the prices over the 'phone; and then he told me he wanted to sell, and to sell them at the market.

Q. So he was from 80 to \$100,000 to the good at that time?

A. Yes, he was sufficiently covered with margin.

Q. And he did not have to sell?

A. No sir.

Q. Now did the account stand on that day with Wall? How was Wall's account?

A. They were all covered too.

Q. To what extent; the same amount?

A. No.

Q. About how much?

A. (After referring to book.) \$49,000; he had an equity of pretty near \$50,000.

Q. And how was the account of Steel?

A. Steel had an equity of about \$131,000, pretty near \$132,000. Enright here has got an equity of \$51,800.

Q. Now, did Mr. Enright look to you for his money after the sale?

A. No; I did not hear from anyone after that.

Q. Well, didn't he come around to get his money?

A. No. I was up in the District Attorney's office; I was not in the office there—you mean that same day?

Q. Any time. Has not Mr. Enright been around looking for his money?

A. Not to me, he never came.

Q. Well, to whom?

A. I have given Mr. Sullivan money—that is, I cashed checks amounting to 15,000, 10,000, \$20,000, and my stub is marked "For the account of Wall," and then I gave the money to Mr. Sullivan.

Q. You mean you gave the money to Mr. Sullivan in cash?

A. Yes sir.

Q. Which was applicable to those three accounts?

A. That was to be paid to the accounts that were specified on the stub.

Q. What accounts were they?

A. (After referring to check book.) I have testified to all this before Mr. Dooling; there is nothing here but a summary of everything I have said before. I have been up to Mr. Dooling on seventeen and eighteen different occasions on this same matter.

Q. We are in hopes, some day, that we may get the facts.

A. I am telling you as far as I know, everything I have told Mr. Dooling; so I am just re-hashing everything now.

Q. We thought you might be able to remember who those three men are, Enright, Wall, and Steel.

A. If I knew them at all, I would not have to wait this long to remember them.

(Examination of this witness temporarily suspended.)

Signed and sworn to before me this — day of —, 1920. .

Special Commissioner.

1131 DAVID W. BROWDER recalled.

Examined by Mr. Myers:

Q. Now that 15,000 dollar check was cashed by you, wasn't it?

A. Here is the check: On November 29th \$5,000 for cash, account of Charles Enright (indicating).

Q. What happened to that?

A. I think that is one of the checks that I had cashed and——

Q. (Interrupting.) That was made to whose order?

A. Cash.

Q. Well, was any check there in November made to the order of Mr. Wall?

A. Yes sir; there is a check.

Q. How much?

A. One October 17th.

Q. How much?

A. George Wall, \$15,000.

Q. That check was made to the order of George Wall?

A. Yes sir.

Q. And you cashed it?

A. No sir.

Q. Who cashed it?

A. That I do not know, sir.

Q. Didn't you go and get the cash on that check?

A. No sir, not on that check. That was made payable to George Wall. I could not get the cash on that check.

Q. Didn't you get the cash on certain checks made to the order of George Wall?

A. No sir; all the checks I cashed were made payable to the order of cash.

1132 Q. Well, were these accounts of Enright, Wall, and Steel opened as soon as you came to New York?

A. No sir, they were not.

Q. When were they opened?

A. The Enright account was opened October 27th; Steel, October 25th; George Wall account was opened October 14th.

Q. What happened on October 14th in New York, do you recall, with reference to the firm of Sullivan & Company?

A. The 14th?

Q. Yes; wasn't that the time that Mr. Bowls was suspended from the Consolidated Exchange?

A. Some time in the early part of October; I don't remember the exact day, he was suspended from the Exchange.

Q. Wasn't that the date, October 14th?

A. I don't remember if that is the date.

Q. That suspension was because the firm was short of securities, wasn't that so?

A. Short of what?

Q. Securities.

A. The fault was that we failed to meet a Clearing House check.

Q. Then you had to get new funds and securities?

A. Sir?

Q. You had to get additional funds and securities?

1133 A. Yes sir; I had to get in touch with Washington right away; both members of the firm were out of town, and I was alone here in New York.

Q. And then Mr. Sullivan brought some securities over from Washington?

A. No sir; Mr. Bowls I think it was came over with some cash.

Q. And who brought the securities?

A. It was two or three days later, to the best of my knowledge, that the securities were brought over by Mr. Sullivan.

Q. And how much were they?

A. The first securities were brought over October 16th.

Q. By whom?

A. Mr. Sullivan I believe.

Q. And handed to you?

A. No; they was not handed to me. He obtained a loan from the Bankers Trust Company on them.

Q. And how much were those securities?

A. Two 100 share lots; 100 shares of Atlantic Gulf & West Indies, and 100 shares of United Retail Stores.

Q. Those were the securities that were afterwards claimed to have been stolen?

A. No sir; I don't think them.

Q. What?

A. I don't know anything about them being reported stolen.

Q. Well now, you took the account out of the Bankers Trust and took it somewhere else; isn't that a fact?

1134 A. Yes sir; that loan was reduced by \$4,000; when there was a break in the market, and the value of the stock decreased, we had to pay \$4,000 on our loan with the bank; and that was taken up later for \$21,000; he obtained a loan of \$25,000 on it, you see, and reduced it to \$21,000; and they were taken up later and transferred to Washington.

Q. Now, when Mr. Sullivan handed you those securities, or brought them over from Washington on October 16th, was that the time when he told you to open up the Wall account?

A. No; the Wall account was opened up on the 14th.

Q. With what was it opened?

A. 200 shares of Atlantic Gulf & West Indies, and 300 shares of St. Louis & San Francisco.

Q. And were those securities handed to you?

A. No sir.

Q. Well, were they in New York, or was that simply a bookkeeping transaction?

A. They were put in loan with the Riggs National Bank of Washington.

Q. Who told you that?

A. That was done by our Washington office; Mr. Bowls was down there I believe at the time he made that loan.

Q. But you do not know that of your own knowledge?

A. I know the loan was made, but I do not know just who made the loan.

1135 Q. How do you know it was made?

A. Sir?

Q. Who told you it was made?

A. Well, that has been confirmed by the Washington office; it has been confirmed by the bank too.

Q. Now, on the day that you had the trouble with the Consolidated Exchange, that was about October 14th; is that right?

A. I don't remember the exact date, but I think it was before that.

Q. Then you got in touch with Mr. Easterday and he gave you a draft?

A. Easterday?

Q. Yes.

A. No; I did not get any draft from Mr. Easterday.

Q. How?

A. I did not get any draft from Easterday.

Q. Did you get any money from Mr. Easterday at that time?

A. I got a draft on Newman I believe it was.

Q. Drawn by whom?

A. I don't remember the name it was drawn by; it was drawn on Newman & Company.

Q. Didn't you get that from Mr. Easterday?

A. No sir, I don't think so.

Q. Can you state all together how much money was drawn out of this New York office, either by Enright, Wall and Steel, or in those names?

A. All of the money that was drawn out of all the offices?

1136 Q. No; out of the New York office; how much money was drawn out of the New York office?

A. I did answer that.

Q. Approximately how much was it?

A. You will see it in the notes there; I figured it all up for you.

Q. All right.

A. But you know Wall received money from our Washington office too.

Q. Now, during the time that you were suspended on the Consolidated, you were handling your transactions exclusively through Secor, Weil; isn't that so?

A. Yes sir.

Q. And Mr. Easterday suggested, or directed that you have those transactions with Secor, Weil?

A. Yes; I believe he did do that.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

1137 In the Matter of NICHOLAS ARNSTEIN, Alleged Bankrupt.

New York, February 26, 1920—11 a. m.

Met pursuant to adjournment.

Present:

The Commissioner.

Mr. Myers.

Mr. Zalkin.

Messrs. Fallon & McGee, Attorneys for the Alleged Bankrupt, by Eugene F. McGee, Esq.

Alfred Beekman, Esq., Attorney for Miss Fannie Brice.

David W. Kahn, Esq., of counsel for the Alleged Bankrupt, and for Miss Fannie Brice.

Mr. Beekman: I represent Miss Brice. We are producing her under a subpoena which you, Mr. Commissioner, issued, and we want to say that we are ready, and we always have been, as we have stated to Mr. Myers, to answer any material and any pertinent inquiry with regard to any transactions between her and the alleged bankrupt; but we are going to oppose, and strenuously so, any inquiry as to her personal or domestic affairs, if that is going to be your object; we may as well state that now.

The Commissioner: There is no necessity for making any statement at this time. You can object as the questions are raised. That is all.

Mr. Kahn: I appear as counsel for this witness——

Mr. Myers (interrupting): The firm of Rosenberg & Ball?

Mr. Kahn: No; David W. Kahn.

Mr. Myers: Does the firm of Rosenberg & Ball appear, or do you appear?

1138 Mr. Kahn: I appear.

Mr. McGee: The firm of Fallon & McGee, attorneys for the alleged bankrupt.

FANNIE BRICE, being first duly sworn by Commissioner Gilchrist, testified as follows:

Examined by Mr. Myers:

Q. What is your name please?

A. What do you want; my married name?

Q. Any and all names.

A. Fannie Brice.

Q. All the names.

A. Mrs. Arnstein.

Q. What is your first name?

A. Fannie.

Q. How do you spell your last name?

A. Well, I spell it B-r-i-c-e, Brice; and Fannie, I use a "y" on checks and on personal letters, you know.

Q. How do you spell Arnstein?

A. A-r-n-d-s-t-e-i-n.

Q. Is that the only way you spell it?

A. Well, I have never used that name, you know; I have always used Arnold.

Q. You have never gone under the name of Arnstein?

A. No; only when I got married.

Q. You have never signed any checks in the name of Arnstein?

A. No sir.

Q. Never made any agreement with anyone in the name of Arnstein?

A. No sir.

Q. Never rented an apartment in the name of Arnstein?

A. No sir.

Q. You have never done anything under the name of Arnstein at any time?

A. Only when I got married; that is all.

Q. Under what name were you married?

A. My name?

1139 Q. Yes.

A. My right name; Borach.

Q. How do you spell that?

A. B-o-r-a-c-h; Fannie.

Q. You were married under the name of Fannie Borach?

A. Yes sir.

Q. How many times have you been married?

A. Twice.

Q. Who were you married to first?

Mr. Beekman: We object to that as immaterial.

The Commissioner: Sustained.

Mr. Myers: We are trying to find out the different names under which money has been deposited, and we cannot find that out unless we find out the names under which this bankrupt has gone; it is absolutely relevant in order to discover the assets.

Q. State to the Court all the different names under which you have gone at any time?

A. Mrs. Arnold, or Miss Brice; never any other name. When I was married previous, Mrs. White.

Q. What was your name that you went under? What was the full name under which you went at that time?

A. I never used it. Fannie Brice always.

Q. You used the name of White, didn't you?

A. No.

Q. You used it when you got married, didn't you?

A. I was not married long enough.

Q. Weren't you married long enough to use the name of White?

A. No.

Q. Didn't you use it on the day you got married?

A. Well, that way.

Q. Well, certainly you used it. Now, under what name——

A. (Interrupting.) Being a professional woman, they always call me Fannie Brice.

Q. Under what name did you get married first?

A. My right name.

1140 Q. You got married under the name of White, didn't you; Mrs. Fannie White.

A. Well, Fannie Borach.

Q. Wasn't your name Fannie Borach White?

A. I don't know what you mean.

Q. When you were married by the minister.

A. The first time.

Q. Yes.

A. Fannie Borach I gave my name.

Q. You did not travel under the name of White.

A. No sir.

Q. So that you and Mr. White lived together as Mr. and Mrs. Borach?

A. No; as White.

Q. That is what I am trying to get: Did you live together as Mr. and Mrs. White?

A. No; we never lived together.

Q. You were married to him, weren't you?

A. Yes.

Q. That made you Mrs. White?

A. Naturally; that was his name.

Q. What was Mr. White's first name?

A. Frank.

Q. Then you got a divorce and married Mr. Borach?

A. Mr. Arnold you mean.

Q. Yes.

A. Yes.

Q. Jules W. Arnold?

A. Jules W. Arnstein is the right name.

Q. J-u-l-e-s; is that right?

A. Yes.

Q. Where is Mr. Arnstein now?

Mr. Beekman: We object, upon the ground that is immaterial.

Mr. Myers: He is the bankrupt in this case.

The Commissioner: Overruled. Answer that.

Q. Will you answer that question please?

A. I do not know.

Q. When did you see him last?

A. The 12th.

Q. The 12th of this month?

1141 A. It was Thursday, the 12th; that was Lincoln's Birthday.

Q. Where did you see him?

A. Up in my apartment.

Q. Where is that?

A. 1 West 83rd Street.

Q. You have never seen or heard of him since?

A. No sir.

Q. You have not communicated with him since?

A. No sir.

Q. Directly or indirectly?

A. No sir.

Q. And no one has told you where he is?

A. No sir.

Q. Has Mr. McGee told you where he is?

A. No sir.

Q. Have you told Mr. McGee?

A. No sir.

Q. Have you talked to Mr. McGee or Mr. Fallon about the whereabouts of your husband?

A. No sir.

Mr. Kahn: We object to that upon the ground that this does not refer to any transaction between the alleged bankrupt and this witness, and under Section 21-A it limits the examination of the wife of an alleged bankrupt to those matters particularly, and none other.

Mr. Myers: This is to discover assets, and the best way to discover them is to find out where the bankrupt is.

Q. We want to find out where the bankrupt is. Do you know where he is?

A. No sir, I do not.

Q. Did Mr. McGee tell you where he is?

A. No sir.

Q. Or Mr. Fallon?

A. No sir.

Q. And you did not tell them?

A. No sir. How could I?

Q. Did you discuss with Mr. McGee or Mr. Fallon the whereabouts of your husband, during the past week?

A. No sir.

Q. You did confer with Mr. Fallon?

A. No; I was called up by Mr. McGee.

Q. Did you confer with Mr. Fallon yesterday?

A. I saw him try a case yesterday.

1142 Q. You did not talk to Mr. Fallon yesterday?

A. No; just about two minutes.

Q. Did you talk to Mr. Fallon yesterday about your husband?

A. No; he just told me he was my husband's lawyer; that is all; and he went out. I asked him where I could get a cup of coffee; and Mr. McGee went with me.

Q. You did not discuss anything with Mr. Fallon yesterday about the whereabouts of your husband?

A. No sir.

Q. And you did not discuss with Mr. Fallon as to the whereabouts of your husband, at any other time?

A. No sir.

Q. Did you discuss with Mr. McGee yesterday the whereabouts of your husband?

A. No sir.

Q. Or did you have any discussion with anyone at any time within the past ten days about your husband?

A. Oh, I have been asked as to where he is; that is all.

Q. How did you come to meet Mr. Fallon yesterday?

Mr. Beekman: We object to that.

A. Mr. Fallon called me up. I don't mind answering that.

Mr. Beekman: We object to this line of inquiry.

Mr. Myers: The witness is not objecting. These lawyers are objecting. The witness says she wants to tell everything, and these lawyers are standing in the way.

Mr. McGee: We represent the bankrupt, and we object to it.

Q. Did you get any telephone message from your husband since the 12th of this month?

A. No sir.

Q. Or any telegram?

A. No sir.

Q. Or any letter?

A. No sir.

Q. Or did anyone come to see you on behalf of your husband since the 12th of this month?

A. No sir.

Q. Now, did you retain Mr. Fallon or Mr. McGee, or any
1143 other lawyers, on behalf of your husband?

Mr. McGee: That is objected to as incompetent and immaterial.
The Commissioner: I will allow it.

Q. Answer that please.

A. No sir.

Q. Do you know who retained Mr. Fallon or Mr. McGee on behalf of your husband?

A. I never met Mr. McGee or Mr. Fallon in my life until yesterday.

Q. And under what circumstances did you meet them yesterday?

A. Mr. McGee called me up—

Mr. Kahn (interrupting): Just one moment. That is objected to as incompetent.

The Commissioner: Objection overruled.

Q. Go right ahead, Miss Brice.

Mr. Kahn: Just a moment if your Honor please. I think that is a question we would rather reserve for a ruling, until we have Judge Hand pass upon the propriety of that question. We concede that to be entirely immaterial and having no possible bearing upon the acts, conduct or property of the bankrupt, and we would like to have that reserved for the Judge to rule on.

Mr. Myers: They have been talking to the newspapers about this woman being ready to tell everything she knows about this case—

Mr. Kahn (interrupting): I object to any of these statements on the record about the newspapers. This woman is here for examination, and she will answer any proper question.

Mr. Myers: Well if it is not proper to find out where this man is, who is supposed to have all of these assets belonging to the creditors, I would like to know what is proper.

1144 Mr. Kahn: No; we have been here for ten minutes and she has answered your questions.

Mr. Myers: She did until you interfered.

Mr. Kahn: May I ask Mr. Myers not to make these gratuitous insults to counsel on the other side. We have not interfered; we have just taken advantage of our right to object to questions which we deem are improper.

(Question read.)

Mr. Kahn: I ask your Honor then to withhold the answer to that question so that we can appear before Judge Hand on that.

Mr. Myers: Will you testify, Mr. McGee, now without an order, or shall we get an order from the Court for your examination?

Mr. McGee: What do you mean?

Mr. Myers: We would like to examine you now under Section 21-A of the Bankruptcy Act; we can go before Judge Hand and get an order for your examination in a few minutes, as Mr. Kahn will advise you.

Mr. Kahn: Is not it best to hold that until you get through with Miss Brice?

Mr. Myers: No; we would like to suspend *with* her examination and examine Mr. McGee; unless this witness is going to answer the questions; we want to suspend long enough to examine Mr. McGee.

Mr. Kahn: Mr. Commissioner, I will consent that Mr. McGee be examined without an order, but upon the conclusion of their examination of Miss Brice here to-day. We are perfectly willing to have Mr. McGee examined without an order.

Mr. Myers: We cannot go on when they interfere with objections.

Mr. Kahn: I am perfectly willing to have Miss Brice answer all questions that are proper. I said, at the conclusion of
1145 Miss Brice's examination this morning I would be willing to have you examine Mr. McGee without an order for his examination. But I will not consent to have the examination switched from one to the other; that is not regular or proper.

Mr. Myers: Well, it has been done by Mr. Kahn.

Mr. Kahn: Well, I do not remember what I did.

The Commissioner: Next question, Mr. Myers.

Q. (Question read as follows:) "Under what circumstances did you meet them (Mr. Fallon and Mr. McGee) yesterday?"

Mr. Kahn: We withdraw our objection to that.

Q. Please state fully to the Court under what circumstances you met Mr. McGee yesterday.

A. He called up and said "This is Mr. McGee." I said "I don't know any Mr. McGee." He said "I am your husband's lawyer." I said "Yes"? He said "Meet me at the Commodore Hotel," and I went down and met him. He said "I am your husband's lawyer"; and he told me the situation, you know.

Q. Now, tell us what he said; that is what we want to find out.

Mr. Kahn: I object to any statement that Mr. McGee made to Mrs. Brice as being entirely outside of the proper scope of this examination; not related in any way to the acts, conduct, or property of the bankrupt.

The Commissioner: There may be something, Mr. Kahn, in the conversation that may disclose the whereabouts of the bankrupt.

Mr. Kahn: Well, ask her that. I am perfectly agreeable to that question. I want to have the questions limited so that they refer to perfectly proper queries. If you will limit your question to that, I will not object to it.

(Question read.)

1146 Mr. Kahn: That is objected to.

The Commissioner: The objection is overruled.

Mr. Kahn: I ask that the witness not answer, and that we reserve that question for a ruling by the Court.

Mr. Myers: Five minutes ago you said she was going to answer. Where does she stand now? Is she going to answer? She says she is ready to answer. Just as the witness starts to answer, you interfere again and make another objection.

Mr. Kahn: I won't make any effort to answer all your foolish statements on the record by equally foolish statement, Mr. Myers.

(Question read as follows: "Now, tell us what he said.")

Q. Go right on Miss Brice.

A. I said to him—

Q. Just take your time and think carefully.

A. I said, the first thing, "Hasn't this been awful?" He said "What?" I said "All this paper stuff and everything." I said "How can you be my husband's lawyer?" Because, naturally, I was suspicious. He said "Don't worry about that; I am your husband's lawyer." I said "What is your name again?" He said "Mr. McGee." He said "And my partner"—something, what was his name? Fallon, or something—he said "He is trying a case." And he told me about the case that he was trying. And he said "He is trying it now." I said "Gee, I would love to see it." He said "All right, come on up." And I went up in the Subway with him.

Q. Is that all Mr. McGee said to you?

A. Absolutely.

Q. And that is all you said to him?

A. Yes sir.

Q. Didn't Mr. McGee tell you now he came to represent your husband; who retained him?

A. No sir.

1147 Q. You would not tell everything you knew about yourself and your husband to someone who simply said that he represented your husband, would you?

A. I did not tell him—

Mr. Kahn (interrupting): Just a minute. I object to that. There is no testimony that she said anything to Mr. Fallon or Mr. McGee.

Q. Didn't you tell Mr. McGee about what property you had?

A. I don't know what you mean.

Q. Did you tell him anything about the money you had in the bank?

A. No sir.

Q. You did not discuss any banks with Mr. McGee?

A. No.

Q. You simply discussed your husband?

A. No; he just told me he was his lawyer; then that was all. I said "Hasn't this been terrible?"

Q. Didn't you ask Mr. McGee where your husband is now?

A. No. If I thought he even knew, I would not ask him even.

Q. Well, didn't you ask him how your husband came to retain him as his lawyer?

A. I did not.

Q. Weren't you interested in knowing?

A. No.

Q. You simply took it for granted that he had been retained and you did not make any further inquiry?

Mr. Beekman: I think all this is argumentative. You are not asking questions; you are fencing with the witness.

The Witness: To tell you the truth, Mr. McGee sat there and didn't open his mouth; he just looked at me; and that made me very quiet too, if you want to know the real truth.

Q. Well, he was not suspicious of you, was he?

A. Well, I don't know.

1148 Q. You say you were suspicious of Mr. McGee. What were you suspicious about?

Mr. Kahn: I object to that, Mr. Commissioner. That is entirely incompetent.

The Witness: I can tell you why; I can tell you about those three men.

Mr. Kahn: I object to that as entirely incompetent.

(Question read.)

The Commissioner: I will allow it.
Mr. Kahn: I except, your Honor.

Q. Will you answer?

Mr. Kahn: I shall ask the witness not to answer that question until we have a ruling upon it by Judge Hand.

The Witness: I can tell you that; I have got a reason to—

Mr. Kahn (interrupting): No; just a moment, Miss Brice.

The Witness: No; this is all right. I can tell this.

Mr. Kahn: I withdraw my objection.

The Witness: The reason I say that is because the other night—let me see what night it was now. What was yesterday?

Mr. Kahn: Wednesday.

The Witness: It was Tuesday night I came to the theatre and the elevator boy says "There has been three little boys about seventeen years old or eighteen years old, looking for you." I said "Yes?"

He said "They looked like little messenger boys." He said "I used to work in Wall Street, and I think they looked like Wall Street messenger boys." And I said "Yes?" And I went up to my dressing room and started to make up; and a few minutes later the elevator boy came in and said "There is two of them back and they want to see you." I said "Benny, you go down and see what they want, and what their names are; ask them to give you their names." Well, they gave him a card; it was something like Duffy, Manager of the East Side Kid, or something like that; I don't just remember. And I said "I don't know them, Benny." And I gave Benny back the card. That is the elevator boy, Benny. And Benny took the card down; and he wrote on it and gave it back to the messenger and he wrote on the back of the card and he said "In regard to key lost of vault." And I had lost my vault keys three or four months ago, and I lost them in the house, and if anybody found them they would not know they are mine. So I knew no one could interest me regarding keys of the vault, see? Of course I said "My dear, there is something in the air; somebody is trying to do something to me." See? And that is why I was suspicious.

Q. You started to tell us why you were suspicious of Mr. McGee. Is that what made you suspicious of Mr. McGee?

A. Sure. What could three boys want with me regarding a key?

Q. What have three boys got to do with Mr. McGee?

A. How did I know Mr. McGee any more than I know those three boys?

Q. You say he is your husband's lawyer. You have confidence in your husband's lawyer haven't you?

A. How could I? That was the first time I ever saw him.

1150 Q. You know now that he is your husband's lawyer, don't you?

A. From what he told me.

Q. Your husband has not told you?

A. Of course not. How could he?

Q. Nobody else told you except Mr. McGee?

A. No.

Q. You believe Mr. McGee, don't you?

A. Yes. He would not be wasting his time here if he really was not.

Q. Did you give any money to Mr. McGee yesterday?

A. No sir.

Q. Or at any other time?

A. No. How could I? I only met him yesterday.

Q. Did you retain Mr. Kahn to appear for you here today?

A. No sir.

Q. You retained Mr. Beekman, did you not?

A. Yes.

Q. And Mr. Beekman retained Mr. Kahn; is that it?

A. You will have to ask them. I don't know that.

Mr. Myers: Is that the fact, Mr. Beekman?

Mr. Beekman: Yes; just as a matter of courtesy, to avoid having three or four objectors, I thought we would probably arrange to have one; that is all.

Mr. McGee: We retained Mr. Kahn as counsel.

Q. Where do you keep your bank accounts?

Mr. Beekman: We object to that on the ground that that refers to a personal matter.

The Commissioner: Objection overruled.

Q. The objection is overruled. Will you answer please?

A. I have two accounts at the—what do you call it—73rd Street & Broadway; United States Mortgage & Trust; and I opened a very small account at the Colonial.

Q. In whose name are the two accounts in the United States Mortgage & Trust Co.?

A. One is in Fannie Arnold; and one in Fannie Brice.

Q. And in the Colonial Bank?

A. Fannie Brice. That was only opened a couple of weeks 1151 ago, with a 500 dollar check.

Q. When were the two accounts opened in the United States Mortgage & Trust Co.?

A. Three or four years ago. I have got it in the book.

Q. Have you got the book with you?

A. Yes. I brought everything down.

Q. Will you produce it please?

A. You see, Mr. Myers, this is Fannie Arnold; I use that for my household accounts; just running of my apartment. And you will notice, if you go to the bank, by my stubs, that I have taken money out of that bank and deposited it into this, you understand?

Q. This account of the United States Mortgage & Trust Company in the name of Fanny Brice, F-a-n-n-y; is that right? (Indicate.)

A. That is right.

Q. And that was opened on June 17th 1918; is that right?

A. Yes sir; whatever it says there.

Q. You see it there; is that right? (Indicating.)

A. Yes sir; that is right. I brought all the stubs down too. (Producing.)

Q. Will you please state what this amount is \$6,880, on February 17th? (Indicating.)

A. Well, that is the checks that my husband gave me when he left, to deposit.

Q. Please state all about that, will you?

A. How do you want me to start?

Q. Everthing you know about it. What does that represent, that item of \$6,880?

A. It represents a check of \$5,000 and one of 1,200 and something, given to me by my husband on Thursday.

Q. When?

A. On Thursday.

Q. On Thursday, February 12th 1920?

A. Yes sir.

Q. On what bank were those checks drawn?

1152 A. You mean on what bank, what was the name on the check?

Q. Yes.

A. Pacific Bank.

Q. That is where your husband had his account?

A. Yes sir.

Q. And he drew those two checks to the amount of \$6,880, in your favor?

A. He made them out and told me to deposit them in my bank on the 17th—no; he told me to deposit them on Monday, because he said that other check would not be there until Monday.

Q. What other check?

A. The check that was put in the Pacific Bank.

Q. What check was that?

A. 15,000 and 1,050.

Q. What checks were they?

A. They were somebody's checks.

Q. Don't you know whose?

A. No sir.

Q. Don't you know where he got that money?

A. No sir; I only know that he was to a gambling house the night before.

Q. Whose gambling house?

A. I don't know.

Q. How do you know it was a gambling house, Miss Brice?

A. I know I heard him talking about it.

Q. Heard who?

A. My husband.

Q. To whom did he talk?

A. To the people that he went out with.

Q. What people? I want to go into the whole business; tell us everything now.

A. Well, I certainly don't like to bring their names in.

Q. Oh yes; tell us everything; you are under oath, you know; we just want you to tell us in your own quiet way.

A. I hate to say.

Mr. Kahn: I don't believe the names of other people——

The Witness (interrupting): It is not anything that I
1153 want to conceal, but they are nice people.

Mr. Myers: Let us have a ruling now, your Honor, on the proposition of this witness being entitled to counsel.

The Commissioner: She is not entitled to counsel.

Mr. Myers: All right; then I objected to Mr. Kahn or Mr. Beekman or Mr. McGee interposing any further objection.

The Commissioner: Counsel may object on behalf of the bankrupt.

Mr. Myers: If Mr. McGee appears on behalf of the bankrupt, he has got to produce his authority; we want to see his authority. A lawyer cannot walk in here and say he appears for a bankrupt without producing his authority. This bankrupt is a fugitive from justice. Let him produce his authority.

The Commissioner: The question is raised——

Mr. McGee (interrupting): I filed a notice of appearance as attorney for the bankrupt.

Mr. Myers: What authority have you to appear for the bankrupt?

Mr. McGee: I have filed a notice of appearance, and I am an officer of this Court.

Mr. Myers: Then I would like to examine Mr. McGee on this question of retainer.

Mr. Kahn: I now object to your examining him unless you get an order and proceed in the orderly way. I object to your examining him now, without getting an order.

Mr. Myers: It is necessary for us to know; before we allow a lawyer to come and interpose objections, it is necessary to know whether he is in truth and in fact the attorney for the bankrupt.

Mr. Kahn: Then you will have to get an order for his ex-
1154 amination, Mr. Myers, as the law requires.

The Commissioner: Mr. Myers, do you question the right of Mr. McGee to appear as attorney for the bankrupt?

Mr. Myers: I absolutely question it. I say this bankrupt is a fugitive from justice, and if Mr. McGee has been retained by this man, it must have been in writing, or by some communication, and we are entitled to know where this man is so that we can discover the assets belonging to this estate.

The Commissioner: If there is any question, this is not the proper place to raise it. He is a member of the Bar of this Court, and he has filed a notice of appearance. He is an officer of this Court.

Mr. Myers: We want to know now, before he makes any further objections on behalf of this bankrupt, whether he has any authority to appear for the bankrupt.

The Commissioner: This is neither the time nor the place to raise that question now, or to go into the question at all. You can raise it at a future time, and it will be passed on.

Q. What did you do with this \$6,880, Miss Brice?

A. Deposited it in my bank.

Q. Can you say why you held it from February 12th to February 17th?

A. Because I could not put it in; there was no money in his bank; that check he put in was dated—you know, the one that went in the Pacific Bank was dated for Friday, see? My husband left Thursday, and he said "You cannot put this in until Friday." He said it would take three days for it to go through. Naturally I did not want to put these other checks in my bank until that other one went through.

1155 Q. Then you put the \$6,880 in the United States Mortgage & Trust Co.?

A. Yes sir.

Q. Then what happened?

A. Then a day or two later I got them back, it said "Funds not available." All three came back.

Q. What is the third check?

A. What do you mean? I put in, one was \$4,000, one was \$5,000, and one was 1,200 and something; I forget.

Q. All together \$6,880?

A. No; one was made out, \$4,000, for Fannie Arnold; see?

Q. You put one in another bank?

A. Yes sir.

Q. In another account; is that right?

A. Yes sir.

Q. Have you those checks here?

A. No; I tore them up.

Q. Don't you know those checks were dated February 16th?

A. That is right; that is what they were dated.

Q. Well, that is after your husband left, isn't it?

A. Yes.

Q. And they were dated ahead?

A. Yes sir; because they could not go in sooner than that, because the other check had not gone through yet.

Q. And you put them in your bank on the 17th?

A. That is right; that was on Tuesday.

Q. Where did you get those checks?

A. From my husband.

Q. Then you put them in the bank?

A. That is right.

Q. Then you got them back?

A. Yes sir.

Q. When did you tear them up?

A. The morning they came.

Q. When was that?

A. I forget; two or three days later I guess, or two days later; "Funds not available" it said. It must have been Wednesday or Thursday.

1156 Q. Why did you tear them up?

A. I could not even tell you.

Q. How?

A. I guess so that the servants would not see them, or something like that; it said "Funds not available."

Q. You did not need that \$16,000? You did not need that money?

A. Well, those were the checks that came back.

Q. You did not think they were any good any more?

A. Well, then I knew that they must have stopped my husband's account. You know those three men were——

Q. (Interrupting.) Will you please state what this \$650 represents, February 19th? (Indicating.)

A. My salary.

Q. And \$1,225 on January 27th? (Indicating.)

A. You will have to find that out from the bank, how that was paid; I don't know. But part of it would be my salary, you see.

Q. What is your salary?

A. \$650.

Q. A Week?

A. Yes sir.

Q. Does that represent two weeks' salary? (Indicating \$1,225 item.)

A. I don't know; you will have to find out what it means. It must be some cash or some other checks; you know, I am in business too, and I get royalties on some songs and——

Q. (Interrupting.) What are the moneys deposited in this account, Fannie Brice, what does that represent; all your salary?

A. Salary and money.

Q. What other money?

A. Well, I play for special performances; I work every Sunday at the Amsterdam and we get paid in cash. And I have a shop.

Q. Where have you a shop?

1157 A. At 167 West 72nd Street; dressmaking establishment.

Q. Under what name?

A. Lottie & Brice.

Q. Who is Lottie?

A. Lottie Cantor from Chicago.

Q. C-a-n-t-o-r?

A. Yes sir; a nice little Jewish girl.

Q. And you own that business?

A. No; she owns 50 per cent of it and I own 50 per cent.

Q. And the 50 per cent that you own went into that account; is that right?

A. No.

Q. None of it went into here?

A. No sir.

Q. Well then, what does this account in the name of Fannie Brice represent? Simply your earnings from the stage?

A. Yes sir.

Q. You testified a few months ago that some of the money in here was from your dressmaking establishment. That is not so; is that right?

A. No; not in there.

Q. And this account in the name of Fannie Brice in the United States Mortgage & Trust Co., represents your earnings from the stage?

A. Yes sir.

Q. Is that right now?

A. Yes. Let me see something and I will tell you something. (After examining items.) I don't know; that \$1,225, that was from some more checks—

Q. Look it over carefully.

A. I would not remember; the bank can tell you.

Q. You have a good memory, haven't you?

A. No; a very bad memory.

Q. You remember all your songs, don't you?

A. There are two things I can remember, is songs and telephone numbers. If you don't think I have a bad memory, I will tell you something I have been doing for months: I have been paying the gas bill to two companies every month, to the Consolidated 1158 and the Amsterdam. I was just about to see about it when this came up.

Q. What does this account in the name of Fannie Arnold represent?

A. Housekeeping.

Q. Just tell us more about that. What does that mean, house-keeping?

A. Well, servants and food and rent.

Q. Well, what money goes in there; earnings from the stage, or earnings from other sources?

A. No; from the stage.

Q. You opened that account on October 14th 1919, did you not?

A. Yes sir; when I came in from the country. You see I was down in Huntington all Summer.

Q. That is your country home, isn't it?

A. Yes sir.

Q. You notice this deposit of \$3,000 on December 9th 1919; will you please state what that represents?

A. I owed a bill down at Huntington, and I paid it in there, because I wanted to pay it in the Arnold name.

Q. Why was that?

A. Well, because it looked better to be paid in the Arnold name. I don't like to pay bills in Fannie Brice's name.

Q. You mean you pay the Huntington bills in the name of Arnold and the New York City bills in the name of Brice; is that right?

A. Arnold, all housekeeping bills.

Q. Don't you pay any of your bills in the name of Fannie Brice?

A. No, not household; nothing that my husband ought to do.

Q. Well, were you getting any money from your husband to run the home, or didn't he give any money to you to run the home?

A. That was my money.

Q. You were supporting the home?

A. Yes sir.

1159 Q. At all times; is that right?

A. Yes sir.

Q. He did not contribute at all?

A. Maybe \$50 or \$20, when he would get lucky on a horse.

Q. And sometimes when he won at cards; is that right?

A. Yes. I don't know anything about Mr. Arnold's business.

Q. Well, what is his business?

A. I don't know yet. He plays the races.

Q. Well, has he any business?

A. He has had two or three.

Q. What were they?

A. Shirt factory—shirt hospital; mending shirts.

Q. Where was this shirt hospital?

A. On Broadway.

Q. That is a long avenue?

A. What?

Q. That is a long street, Broadway.

A. Well, it is about between 54th and 55th Streets I think, uptown side.

Q. Has he still got that?

A. No.

Q. What other businesses was he ever in?

A. Three or four, or maybe six or seven years ago he was in the automatic fire detector in the Circle Building.

Q. Under what name?

A. Arnold of course.

Q. And the shirt hospital, was that in the name of Arnold too?

A. Yes sir.

Q. What other businesses?

A. Well, he would buy a car sometimes and paint it up and doll it up and sell it.

Q. Always under the name of Arnold?

A. Yes sir.

Q. What other names has he had since you have been living with him?

A. Arnold.

Q. That is the only name?

A. Yes sir.

Q. Didn't he go under the name of Borach at all?

A. No sir, never.

Q. Or Arnstein?

A. Not that I know of.

Q. Or McCormack?

A. No.

1160 Q. Or Ames?

A. Well, I don't know.

Q. You don't know what names he has gone under?

A. Never any other name but Arnold with me.

Q. Will you please tell us what this \$3,000 represents? (Indicating.)

A. I don't know how you mean that.

Q. Well, who did you pay it to and who did you receive it from?

A. That is my own personal money.

Q. Was that drawn out of one bank and put in another?

A. I don't even know.

Q. Have you got your check books with you?

A. You mean my stubs?

Q. Yes.

A. Yes.

Mr. Kahn: Mr. Myers wants to know what that deposit is. Is that it? What the 3,000 dollar deposit is.

The Witness: I don't know if I put it in cash in that bank or took it out of that bank; I don't remember.

Q. Have you got your check stubs, Miss Brice?

A. I don't know; I brought them up to the office.

Q. Let us have everything will you?

A. I never make the stubs up.

Q. Well, put everything up here, will you, Miss Brice?

A. I don't know if I put that in in cash; I don't know how I put that in; I don't remember; I never looked.

Mr. Kahn: Do you keep a record of what you put in the bank?

The Witness: No; nothing.

(Witness hands counsel papers.)

Q. Have you the February vouchers here?

A. I don't know.

Q. You have not got them back yet, have you?

1161 A. Oh no; I don't think so.

Q. Will you please state who Rose Brice is?

A. My mother.

Q. Where does she live?

A. On 139th Street.

Q. And the address?

A. I don't know; I forget.

Q. When did you see your mother last?

A. She comes to see me.

Q. You do not go to visit her?

A. No; very very seldom.

Q. How long has she been living on 139th Street?

A. I don't know; two or three years.

Q. Is that on the East Side or West Side?

A. West Side.

Q. You do not know what number?

A. I think it is right off Broadway, but I don't remember—three hundred, four hundred, or five hundred; I don't remember.

Q. You say you remember telephone numbers?

A. Yes; 628 Audubon.

Q. Who is E. Futter, F-u-t-t-e-r?

A. E. Futter; he is one of the men up on the Roof.

Q. You mean at the Follies?

A. Yes; head waiter or something.

Q. And Lottie Brice is the lady who takes charge of the dress-making establishment?

A. Lottie & Brice that is, isn't it?

Q. It says "Lottie Brice" here, doesn't it? (Indicating check.)

A. Yes; that is right, it does; but that was supposed to be Lottie & Brice.

Q. That is a mistake, is it?

A. Yes sir.

1162 Q. Lottie & Brice?

A. Lottie & Brice.

Q. That is the dressmaking establishment where you got fifty-fifty?

A. Yes sir.

Q. What other bank accounts have you got outside of the United States Mortgage & Trust Co.?

A. Colonial.

Q. Have you got those books and papers here?

A. No. I took a check, that is, a Fannie Brice check, out of that bank and opened an account with \$500 at the Colonial.

Q. When did you do that?

A. Oh, maybe—I could not really tell you; I don't think over three or four weeks ago.

Q. That is the only money you have at the Colonial Bank?

A. Yes sir.

Q. Now, you have no other bank accounts?

A. No sir.

Q. Either under the name of Fannie Brice or Fannie Arnold?

A. No sir.

Q. Or under any other name?

A. No sir.

Q. Will you please state the various names under which your husband has been known.

Mr. Kahn: You have asked that several times, Mr. Myers.

A. I have only known him as J. W. Arnold.

Q. And you have known him as Nicholas Arnstein, haven't you?

A. That is right. That is his right name; Jules W. Arnstein.

Q. You have known him also as Nicholas Arnold?

A. Since I have been reading the papers.

Q. You have never known him before that under that name?

A. No sir; always Nicholas Arnold. His right name is Jules Wallace Arnstein.

Q. Did you ever know him under the name of Adair?

1163 A. Never, no sir.

Q. Have you any safe deposit box?

A. I have.

Q. Where?

A. At the Lincoln Trust.

Q. Where is that?

A. 72nd Street & Broadway.

Q. Is that in your name?

A. Yes sir; Fannie Brice.

Q. Is that the only safe deposit box that you have?

A. Yes sir.

Q. Will you state what is there?

A. A gold vanity bag; a gold cigarette case; and a mesh bag.

Q. And anything else?

A. No sir.

Q. When were you to that box last?

A. I don't think in three or four months. I lost the key; they can tell you that up there.

Q. Are you willing to open that box with the Receiver?

A. You bet your life; any time you want.

Q. And let the Receiver list what is there?

A. You bet your life.

Q. Now, you have no other safety deposit box of any kind?

A. No sir.

Q. Haven't you a safety deposit box in the Madison Safety Deposit Co.?

A. I don't even know where it is.

Q. Under the name of Fannie Brice and J. W. Arnold?

Mr. Kahn: Where is that located, Mr. Myers?

A. I have not got it, so what is the use to know the location?

Q. Haven't you a safety deposit box in the United States Safety Deposit Co.?

A. No sir. About two or three year ago Mr. Arnold and I got one, but we have not paid it and have not been near it in two years or maybe a year and a half; I don't know.

Q. And you have not any papers there of any kind?

A. No sir.

1164 Q. Have you got the key?

A. They were on the bunch that I lost. You see, I had not paid—you know what I mean; there was a year due on it, or something; I just didn't bother to go there and tell them I did not want it any more.

Q. When did you open that box?

A. I don't know; they will tell you; I forget.

Q. You don't remember what year?

A. No; I think it must be a year and a half ago or two years ago; I don't know; you had better find out.

Q. This is your signature, is it not? (Handing witness card.)

A. Absolutely.

Q. Is that your husband's signature on there? (Indicating.)

A. Yes sir; absolutely. How long ago was that?

Mr. Myers: June 1918. I offer this card for identificaton.

Card marked Exhibit 1 for identification of this date.

Q. Is this your signature on this card? (Indicating.)

A. Absolutely.

Card offered and marked Exhibit 2 for identification of this date.

Q. Are you willing that this safe deposit box in the United States Safety Deposit Co. should be opened by the Receiver?

A. Absolutely.

Q. Do you know who Adelaide F. Arnold is?

A. No sir. I can tell you "No sir"; I had them all read off to me before.

Q. Did you ever go under the name of Sadie Brice?

A. No sir.

Q. Do you know a Sadie Brice?

A. No sir.

1165 Q. Do you know Frances Brice?

A. No sir.

Q. Did you ever go under that name?

A. No sir.

Q. Do you know anyone by the name of Shulock, S-h-u-l-o-c-k?

A. No sir.

Q. Do you know Marion Murray?

A. No sir.

Q. M-a-r-i-o-n?

A. No sir.

Q. Do you know Maurice Dekker, D-e-k-k-e-r; is he related to you?

A. No sir, no relation, thank God.

Q. Is he associated with your husband in business?

A. No sir. I don't think my husband knows him. I know he don't.

Q. Have you had any business dealings with him?

A. No sir. Just I used to like to talk to him; he used to make me laugh.

Q. When did you see him last?

A. I would always see him up in Reisenwebers.

Q. When did you see him last?

A. Oh, I don't remember; maybe four, three or four weeks ago; three weeks ago.

Q. Do you know G. D. Hynson? H-y-n-s-o-n?

A. No sir.

Q. Do you know Sam Gioux, G-i-o-u-x?

A. Pronounce it.

Q. G-i-o-u-x?

A. You had better pronounce it; I can't.

Q. You can pronounce it as well as I can.

A. Go on; pronounce it.

Q. Gioux, I guess; G-i-o-u-x.

A. I don't know; I could not know anybody by that name; I would forget it.

Q. In this card of the safety deposit account in the Madison Safety Deposit Co., which was opened last year, you state that you were single, do you not? (Indicating.)

A. I don't know; I don't remember.

1166 Q. That was June 1919?

A. Well, then, I must have been single.

Q. Were you single at that time?

Mr. Kahn: That was June 1918.

Q. June 25th; were you still single?

A. Well, if I said I was single there, I must have said it.

Q. You were in fact single at that time?

A. When was I married? Yes, I was single, sure.

Q. On June 25th 1918, Miss Brice, when you opened that account, you were not married at that time?

A. No sir.

Q. Weren't you married to Mr. White?

A. No sir; I had been divorced for years.

Q. Or to Mr. Arnold?

A. No.

Q. When were you divorced from Mr. White?

A. I forget; I have got the papers.

Q. How many years ago?

A. Oh, five or six or seven or eight years ago; six years ago.

Q. When did you get married to Mr. Arnold?

A. Some time in June 1919 I think—the 18th I think.

Q. Last year?

A. Yes; 1919.

Q. 1919?

A. Wasn't it?

Q. Last year? Don't you remember whether you were married last year or the year before?

A. I told you I don't pay any attention to dates or anything.

Q. Well, you paid attention while you got married, didn't you?

A. Well, I told you if you asked me when my mother was born, I could not tell you, or where my brother was born I could not tell you.

Q. You know how old you are don't you?

A. Yes; and I know my birth.

Q. You know how old you are?

A. Yes sir.

Q. How old are you?

A. 28.

Q. You know whether you were married last year or the year before, don't you?

A. Yes; last year.

Q. Were you married last year?

A. Yes; the 18th; 1919. That is right.

Q. Were you married in New York?

A. No; in Brooklyn. It is in the papers; they have got it absolutely right, so you can get it out of there.

Q. Did you have any safety deposit box with J. W. Arnold before you married him?

A. I guess it was; you know when I was married; it is there, isn't it?

Q. Did you have a box with Mr. Arnold before you were married to him; a safety deposit box anywhere?

A. Yes, I did; that is right; that is where my bank is, you know; where my money is.

Q. Then you opened this account, this safety deposit account in the United States Safety Deposit Co. with Mr. Arnold, before you were married to him?

A. That is right absolutely.

Q. What did you place there at that time?

A. Well, I got it to put in my insurance papers, and he was going to get insured; that is why we were going to have it together; in case he died I could get the insurance, and in case I died he could get it.

Q. What insurance papers did you put in there?

A. My insurance papers.

Q. What insurance papers?

A. Well, I got my apartment insured, you know; and my electric; and my life; that is what I have got.

Q. What did he put in?

A. Well, he was going to be insured, but he never got to do it.

Q. So everything that is in there belongs to you?

A. Well, there is nothing in there.

1168 Q. When did you take them out?

A. I don't know; whenever it says there; I don't remember. It will say there; they put it down every time you make a visit.

Q. Now, you have taken out insurance on jewelry very recently, have you not?

A. That never went through.

Q. Didn't you take out a policy for \$27,000 on jewelry within the past sixty days?

A. Mr. Arnold was supposed to do that for me; that was never done. He was supposed to send Mr. Arnold a bill how much it would be.

Q. Who is "he?"

A. The insurance man.

Q. What is his name?

A. I don't know; New.

Q. Do you know where he is located?

A. No, I do not. I am very bad on business or papers or anything, and I let Mr. Arnold take care of that.

Q. Which safe deposit box have you got all this jewelry in?

A. I have got it home.

Q. \$27,000 worth of jewelry?

A. I don't know; you will have to find that out.

Q. Well, wasn't that bought by Mr. Arnold very recently?

A. No sir. I will let you know where every piece was bought, and let you see every piece and tell you exactly where every piece came from. Nothing has been bought in the last two years.

Q. Tell us now where did you buy it?

A. Rudolf Hammel on 45th Street & Fifth Avenue.

Q. You have not bought any jewelry in the past two years?

A. Well, he will tell you when I bought it.

Q. No; I want to find out from you, Miss Brice.

A. Not in the last year and a half or two years, or two and a half; between one and three; something like that.

Q. You did not get any from your husband during the past two years?

A. No. I would let him pay for it so that it would look like he was buying it.

Q. When did he pay for them?

A. When he bought them?

Q. When?

A. I told you you can ask Hammel; I don't know; I don't know dates.

Q. Was it this year or last year?

A. Not for two years—I don't know.

Q. Before or after you were married?

A. Before and after—no; not after; before. I have not bought anything since I was married.

Q. Didn't you apply for \$27,000 worth of insurance covering jewelry in the past thirty days?

A. No sir. I said to my husband, "I think I ought to have my jewelry insured," because I left it around the house, I said to him.

Q. When did you say that; within the past thirty days?

A. I don't know when I said it.

Q. Was it this month or last month?

A. No; months ago; I said that six or eight months ago.

Q. You did not get the policy?

A. I don't know; Mr. Arnold was attending to it.

Q. Haven't you any insurance papers covering your jewelry now?

A. No; it never went through.

Q. Have you any, do you know?

A. I don't know.

Q. Have you ever had that jewelry insured at all, Miss Brice, at any time?

Mr. Beekman: Mr. Myers, isn't that going into her personal affairs, jewelry bought two or three years ago?

Mr. Myers: She testified this jewelry was bought by her husband.

The Witness: I said with my funds.

Mr. Beekman: There ought to be a limit to the inquiry into the affairs of this witness. We have not tried to interfere; we want to tell you everything. We have shown you the private books and records of her own affairs; but surely there is a limit. Transactions with her husband of course we have got to answer.

Mr. Myers: We have information here that this jewelry was insured within the past thirty days. We have copies of the bills.

The Commissioner: Copies of what bills? Of insurance?

Mr. Myers: The bills for insurance covering the \$27,000 worth of jewelry.

The Commissioner: Show it to her and direct her attention to it.

Q. Did you have a check account at that time when this jewelry was bought?

A. Yes sir.

Q. So that the moneys which went to buy this jewelry were drawn by you by check?

A. No; sometimes I would give Mr. Arnold the money to put in his bank, and tell him to pay it with a check.

Q. In what bank?

A. In the Pacific Bank.

Q. Has he had an account there for the past three years, in the Pacific Bank?

A. I don't know if that is the jewelry; perhaps it was paid with cash.

Q. You said that the jewelry was bought two or three years ago.

A. I said from one to three years. I know nothing has been bought in the last two years, I am sure of that. You can find that out.

Q. Mr. Arnold only opened his bank account in the Pacific Bank very recently; is that not a fact?

A. I don't know.

Q. Don't you know it was only opened there within the past two or three months?

A. I don't know.

1171 Q. Do you mean to say that this jewelry was paid for by check on the Pacific Bank?

A. No sir; I don't know how it was paid.

Q. Well, how was the jewelry bought?

A. I don't remember. You can ask Mr. Hammel, the jeweler.

Q. Was it paid for by your check or your husband's check?

A. I don't remember.

Q. Was it bought by check of Mr. Arnold?

A. I only know it was my dough; that is all I know.

Q. Didn't you notice when you bought it?

A. No sir. I have got some stuff that is seven and eight years old.

Q. You never carried any insurance on any of it?

A. No. It was always too much money.

Q. Did you buy that Baker electric machine?

A. Yes sir.

Q. With your check or your husband's check?

A. With my check, about four or five years ago.

Q. On what bank?

A. I don't remember—no; I think I gave him cash. I only paid half of it; I gave him 600 down.

Q. Were any payments on that automobile made in cash?

A. No, I don't think so. I think they were checks. I am not sure.

Q. Well, have you got all the checks that you have used during the past three or four years?

A. I don't know if I have or not.

Q. Well, have you brought here to Court to-day all the checks that you have?

A. All that I had home.

Q. Well, have you any checks anywheres else?

A. I don't know.

Q. Now, you did insure that Baker electric machine, didn't you, through the same man who insured the jewelry?

A. I don't attend to that; I don't know if it is insured or it is not, or anything.

Q. Well, didn't you apply for insurance on this jewelry and on the Baker electric machine?

A. I don't know; maybe my brother did it.

Q. What is your brother's name?

A. He goes under the name of Phil. Brice. His name is Phil. Borach.

Q. Where does he live?

A. With my mother.

Q. Is he in the insurance business?

A. No sir.

Q. What business is he in?

A. He drives my mother around.

Q. And have you other brothers?

A. Lew Brice.

Q. What business is he in?

A. Actor.

Q. Where?

A. On the Orpheum Circuit.

Q. Have you sisters?

A. Yes sir.

Q. Give us their names please?

A. Mrs. Russak. They were over there already; they got the place where she lives.

Q. I have nothing to do with them. How do you spell that please?

A. I don't know how she spells her name. R-u-s-a-k I think.

Q. Where does she live?

A. In Newark.

Q. Do you know the address?

A. No sir.

Q. When did you see her last?

Mr. Kahn: One minute. I object, if your Honor please. We have allowed this examination to go along in this way, to go on for hours, but there has got to be some limit to it. I do not object to any question that has any reasonable tendency to show assets of the bankrupt, or that has anything to do with him; but to ask where the sister of this witness lives, it seems to me, touches the very height of absurdity.

1173 Mr. Myers. I do not know how we are going to find out, unless we ask.

(Question read.)

The Commissioner: I will allow the question.

The Witness: She was up on the roof when I came to rehearsal yesterday.

- Q. What business is her husband in?
A. I think in some fur business; working.
Q. Do you know his first name?
A. Ed.
Q. Do you know where he is located?
A. No sir.
Q. Have you other sisters?
A. No sir.
Q. Do you know Edward A. New in the insurance business?
A. Yes; I think I met him once.
Q. Do you know him well?
A. No; I think I just met him once.
Q. When did you see him last?
A. Probably months ago; I don't remember just when.
Q. You did not see him in the past three or four months?
A. Yes, I think so; about three months ago.
Q. Didn't you give him an order to take out a floating policy covering all of your jewelry, in the amount of \$27,150?
A. I think my husband attended to it.
Q. Did you pay him?
A. No; never paid that.
Q. Didn't you pay a premium of \$816.25 covering that insurance?
A. Not the jewelry; no jewelry. I know I gave Mr. Arnold some money for some other insurance; but I know not jewelry.
Q. Well, didn't you get a policy from the Agricultural Insurance Co., a floating policy covering all of your jewelry, of the value of \$27,150?
A. Not that I know of, no sir.
- 1174 Q. You have no such policy in your possession or under your control?
A. No; not that I know of. Sometimes a lot of papers come and I will stick them in a drawer and not even look at them.
Q. And you put your insurance in no safety deposit box anywhere?
A. Just those three pieces I told you were in the Lincoln Trust.
Q. Have you any money or jewelry or property of any kind, stocks or bonds, in the name of anyone else?
A. No sir.
Q. Anywhere?
A. So help me God, no.
Q. Do you know where your husband keeps his various bank accounts?
A. I only know the Pacific Bank.
Q. Did you ever receive any checks from your husband drawn on any other bank?
A. When do you mean? Within the last year?
Q. At any time.
A. I think he had an account once at the Harriman Bank, two or three years ago.
Q. Have you ever visited any safety deposit company with your husband at any time during the past three years?

A. That one we had together.

Q. Now, which one is that?

A. You know, that one where both our names are; the one at the United States Mortgage & Trust; that is right.

Q. That is the United States Safety Deposit Co.; is that the one you mean?

A. Yes. That is in the same building where my checking account is, you know.

Q. Didn't you make up a list of your jewelry for Mr. New, the insurance man?

A. I did not do it, no.

Q. Well, do you know whether such a list was prepared?

A. I don't know.

Q. Well, don't you know that such a list had to be prepared before the policy could be taken out?

A. No, I do not know.

Q. You say that you never made such a list, or had anything to do with making such a list?

A. Not that I know of.

Q. And you never supplied Mr. New with any information about your jewelry?

A. Yes; I told him—I showed it to him and said I wanted to have it insured; and then he went out.

Q. When was that?

A. I don't remember; two or three or four months ago maybe.

Q. What year?

A. Oh, I guess that was 1919; that was before.

Q. Can you state what month?

A. No, I could not tell you.

Q. Where was the conversation held?

A. Up in my apartment.

Q. And you have no list of that jewelry now?

A. No sir.

Q. Can you state in detail what it consists of?

A. That is my private property, isn't it?

Mr. Kahal: We object to that, if your Honor please.

The Commissioner: Objection sustained.

Mr. Myers: I thought your Honor had ruled that this witness is not entitled to counsel?

The Commissioner: That is private property; not property of the bankrupt.

The Witness: Your Honor, bought two or three years ago.

Q. Will you please state whose writing these figures are "\$15,000" and "1050"? (Indicating.)

A. That is my writing.

1176 Q. So you made deposits in the Pacific Bank?

A. You bet I did.

Q. To your husband's account?

A. Yes sir. Those are the checks he gave me.

Q. And you have no account in the Pacific Bank?

A. No sir.

Mr. Myers: I ask to have this deposit slip marked for identification.

Deposit slip marked Exhibit 3 for identification of this date.

Q. Miss Brice, have you any safe deposit box in your own name, or anyone else's name, in or out of the City of New York?

A. No sir, I have not.

Q. Have you any bank account?

A. No sir.

Q. Have you any bank account or trust company account or savings account in any bank other than those about which you have testified, either in New York City or any other place?

A. I had a housekeeping account down in Huntington when I was living there.

Q. In what bank?

A. The Huntington Bank.

Q. And is that closed, that account?

A. Yes sir.

Q. What property is down in Huntington now?

A. Just my place.

Q. What?

A. My place.

Q. Do you own the property there?

A. Yes sir.

Q. When was that bought?

A. Last year: I do not know the date. You will have to look it up.

Q. What month?

A. I don't even know.

Q. Was it bought last Summer or last Winter or when?

A. I think last Winter; the end of the Winter, just before we went down.

Q. From whom was it bought?

1177 A. A Mrs. Alard—it is all in the papers.

Q. Will you please state from whom that real property was bought at Huntington?

A. Mrs. Alard.

Q. How do you spell that please?

A. A-l-a-r-d I think she spells it.

Q. Does she live in Huntington?

A. I don't know where she is now.

Q. Was title to that property taken in your name?

A. No; I bought it in Fannie Arnold and J. W. Arnold.

Q. And where is the deed?

A. I have it.

Q. Where?

A. Home.

Q. How much did you pay for it?

A. I have forgotten how much it was.

Q. Well, \$1,000 or \$10,000?

A. Oh no; it was up around \$12,000; something like that, or maybe \$11,000; I forget.

Q. Did you pay it by cash or by check?

A. I think I gave some cash and some check; I am not sure. You will have to ask them; I really don't know, and I do not want to make a statement unless I am sure.

Q. No; I want you to be sure of your testimony. Do you recall on what bank you drew the check or checks?

A. I don't remember; really, I do not.

Q. Did you have a lawyer representing you in the transaction?

A. No; an agent.

Q. Did you have a title company?

A. Agent.

Q. What is his name?

A. Well, I can find out I am sure, if I look at my papers.

Q. Where are the papers?

A. Home.

Q. Didn't you bring all your papers here to-day?

A. No, not all.

Q. Didn't Mr. Grossman tell you to bring all your papers?

1178 A. No sir. I suggested bringing these down.

Q. What other papers have you at home?

A. Just my life insurance, you know, and endowment policy.

Q. What papers have you at home relating to that property at Huntington?

A. I guess that is all. If you knew how much I know about papers, you would laugh. I never look at them, nothing. All I think of is my work and my baby.

Q. I want you to get your mind off your work for a little while, now, and come down to this Huntington property. How much did you pay for it?

A. I think I paid around \$7,000 or maybe 6,000, down, cash.

Q. And you don't know what month you paid that?

A. No; I don't even know what month; but I can find out.

Q. And you don't know on what bank you drew the check?

A. Oh, it must have been my bank. I think I had lots of cash; but I think I drew a check too.

Q. Is that property mortgaged?

A. Yes sir.

Q. Do you know who holds the mortgage?

A. No.

Q. Did you pay the interest on the mortgage?

A. No; my husband tells me so and so: "Give me a check for this, and give me a check for that." And I give the check, and half the time I don't even know what it is for.

Q. Well then, has your husband been running all your affairs?

A. All matters like that, yes.

Q. Everything except the stage?

A. Yes. If he did not do it, it would never be done.

Q. You mean everything except the stage your husband has been attending to?

A. Yes sir.

Q. And this property stands in his name as well as yours?

A. J. W. Arnold and Fannie Arnold.

1179 Q. Please tell us what is in the house. What is there; what property have you there?

A. What furniture?

Q. Yes.

A. Well, the average furniture.

Q. What else?

A. I don't know what you mean, what else.

Q. Well, how much furniture have you there, and where did you get it?

A. I bought it of course.

Q. When did you buy it?

A. Last Summer,

Q. From whom?

A. Beecher Falls people.

Q. In Huntington?

A. No; Beecher Falls.

Q. How much did you pay for it?

A. I don't remember; very very reasonable stuff.

Q. Well, about how much; \$5,000?

A. No.

Q. \$3,000?

A. I don't know. You can find out; I am telling you where I bought it.

Q. More than \$1,000?

A. I really don't know; I cannot remember.

Q. Somewheres between 1,000 and \$5,000?

A. No; I did not spend that much money. I took a lot of that stuff—I used to buy a lot of stuff around in auction rooms.

Q. Did your husband buy it, or did you?

A. I bought it.

Q. With your checks?

A. Yes sir.

Q. Well, he had money in the Pacific Bank, didn't he, of his own at that time?

A. I don't know anything about my husband's affairs.

Q. Don't you know that your husband had many thousand dollars in the Pacific Bank all that time?

A. No sir.

Q. Didn't he tell you that?

A. Not that I know of. He never told me anything, and I never asked him.

Q. You never knew of any money in the Pacific Bank?

1180 A. No sir. Lots of times I used to deposit money for him.

Q. You do not claim any of that money as yours, do you?

A. No.

Q. And you do not claim that any of the money in any of the banks in your husband's name, belongs to you?

A. In my husband's name?

Q. Yes.

A. Well, all that was in the Pacific Bank was that 16,000, and that was not mine.

Q. Or any other money, you testify don't belong to you?

A. Lots of it went in that was mine, yes; lots of it.

Q. That you gave him?

A. No; I put in a couple of times myself. Sometimes I would draw a Fannie Brice check and put it in.

Q. Thousands and thousands of dollars?

A. Well, sometimes I would put cash in. What I would do, he would say "Let me have five or \$600," something like that; and he would gamble with it, or something, and come back and say "Here is seven or 800; here is something for yourself." See?

Q. Please tell us everything that there is in the way of property down in Huntington.

A. That is all; the house.

Q. What is there in the house? Are there any paintings?

A. Furniture—no, not a picture up.

Q. How many rooms are there furnished?

A. Counting the kitchen?

Q. All the rooms, yes.

A. Six or seven.

Q. When were you there last, Miss Brice?

A. Oh, a couple of months ago; three or four months ago; something like that.

Q. Is the house locked now?

A. Yes sir.

Q. And there is no one in charge?

1181 A. Yes; there is a fellow building on there; I am having the back partition made wider.

Q. You have not the key of the house?

A. No.

Q. Who has the key?

A. He has it.

Q. What is his name?

A. Just a minute; Holt.

Q. Now, there is a large stock of wines and liquors there, is there not?

A. Yes sir.

Q. And that cost considerable money?

A. Yes; \$15 a case, and 18.

Q. And how many cases?

A. I don't really know how many is left; six or seven; I don't know.

Q. You are sure it is not more than that?

A. I am sure I think I got thirteen down there; red wines and white wines; they were bought at Smith's Auction Room, corner of 49th Street & Seventh Avenue.

Q. When?

A. Two or three years ago; two years ago I guess.

Q. You did not buy any wines or liquors in the past two years, that you took down to Huntington?

A. No sir.

Q. Wasn't there a large quantity of wines and liquors taken to Huntington recently?

A. No sir.

Q. You are sure about that?

A. Yes sir—I don't know; I did not take any.

Q. Did you see any taken there?

A. No sir.

Q. Or brought there, during the past two or three months?

A. How could I? I was not down there.

Q. And your husband never told you about that?

A. No sir; nothing that I know of.

Q. Do you know a man named Washer, W-a-s-h-e-r?

A. Yes sir.

Q. Do you know him well?

A. Yes sir.

1182 Q. Don't you know that your husband bought a very large quantity of wines and liquors and took them down to the Huntington home?

A. No. I know that he bought some liquor, but I don't know that he took it down to Huntington.

Q. Have you a telephone there?

A. Yes sir.

Q. In your name or in your husband's name?

A. No; in the Arnold name.

Q. J. W. Arnold?

A. J. W. Arnold is right.

Q. Is the bank account in the Huntington Bank in the name of J. W. Arnold?

A. No; Fannie Arnold.

Q. Your husband has no bank account there at all?

A. No—I am saying no here, when I don't know, half the time.

Mr. Kahn: When you don't know, say so.

Q. Only state what you do know.

A. I feel that he has not.

Q. Don't testify to what you feel, but testify to what you know of your own knowledge.

A. I don't know; that is better.

Q. Have you a safe deposit box in Huntington?

A. No sir.

Q. Or anywheres on Long Island?

A. No; no place but the one in New York you know, the one in the Lincoln Trust.

Q. Do you own any other real property?

A. No sir.

Q. Anywhere?

A. No sir.

Q. Have you any other country homes?

A. No sir.

Q. Or Winter homes?

A. No sir; one is quite enough.

Q. Have you any safety deposit box in your mother's name?

A. No sir.

Q. Has your mother a safety deposit box?

1183 A. I don't know; you will have to ask her.

Q. Have any of your brothers or sisters safety deposit boxes?

A. No. I know they have not.

Q. Do you buy stocks or bonds?

A. No sir. I did buy, about three years ago, one Japanese Government bond.

Q. For how much?

A. It cost me \$820 I think.

Q. Since then you have not bought any stocks or bonds anywhere?

A. No sir. I gave Jakie Field a check once to buy me some Westinghouse, because he told me it was good. It has gone down.

Q. Have you still got it?

A. I don't know; I don't think so. I bought it at 56; I think it has been 51 a couple of times.

Q. Have you the certificate?

A. No; I just gave him a check.

Q. And you never got the certificate?

A. I got nothing.

Q. You say you have no brokerage account with anyone?

A. No sir.

Q. And you did not have any during the past three years, except those that you have just testified about?

A. It was Livingston and something that I sent the money to for the Japanese Government bond.

Q. That was about three years ago?

A. Three or four years ago, yes.

Q. Now, has your husband, to your knowledge, any brokerage account anywhere?

A. No; but I know he played the market about a year and a half ago I think.

Q. With whom?

A. I think in the Ansonia Building; McCleave or something like that.

Q. McClave?

A. I think so; I am not sure.

Q. Do you know of any stock transactions that your husband has entered into at any time during the past year?

1184 A. No sir.

Q. Did your husband ever talk to you about any Stock Exchange houses or Curb houses or investment houses during the past year?

A. No sir.

Q. Do you know of any brokerage concern anywhere in New York or elsewhere, which has any securities belonging to your husband?

A. No sir.

Q. Do you know of any brokerage concern in New York or elsewhere with whom your husband has been dealing during the past year?

A. No sir.

Q. Did you meet J. W. Arnold in Europe?

A. No sir.

Q. At any time?

A. Yes; I have been over there with him.

Q. When?

A. 1913 and '14.

Q. Before you were married?

A. Yes sir.

Q. Did you have a bank account in Europe?

A. No sir.

Q. Did you have a safety deposit box in Europe?

A. No sir.

Q. Do you know a man by the name of Gondorf?

A. No sir.

Q. Did you ever hear of his name from your husband?

A. I have read it lately in the papers.

Q. Not from your husband?

A. No sir.

Q. Do you know a man by the name of Nick Cohen?

A. Yes sir.

Q. How well do you know him?

A. Not well.

Q. When did you see him last?

A. I am not sure now.

Q. Well, to the best of your recollection?

A. That is a few weeks ago; three or four weeks ago.

1185 Q. Where?

A. Up in my house.

Q. Did you know him very well up to that time?

A. No; I have only seen him two or three times.

Q. Did he come to see you?

A. No; Mr. Arnold.

Q. Was he in business with your husband at any time?

A. No, I don't think so.

Q. Did he have any transaction with your husband at any time, to your knowledge?

A. No.

Q. Do you know what business he is in?

A. No. I thought he was a gambler; he is always talking me.

Q. Do you know where?

A. Where does he gamble?

Q. Has he a place of business?

A. Not that I know of.

Q. Has he an office?

A. Not that I know of.

Q. Do you know where he lives?

A. No sir.

Q. Do you know where you could reach him?

A. No sir.

Q. Have you had any correspondence with him?

A. No sir.

Q. Have you talked with him on the telephone?

A. No sir.

Q. You have not seen him the past ten weeks?

A. No; I said about four weeks ago.

Q. Where?

A. Up in my house.

Q. You are sure you have not seen him during the past four weeks?

A. Maybe it is a little longer than that; perhaps it is five or six weeks.

Q. Do you know where he is now?

A. No sir.

Q. Did you talk with anyone over the Long Distance Telephone about your husband during the past few days?

A. No sir.

Q. How?

A. No sir.

1186 Q. Do you know where Nick Cohen is now?

A. No sir.

Q. Do you know where his home is?

A. No sir.

Q. Did you ever know?

A. No sir.

Q. Do you know Arnold Rothstein?

A. Yes sir.

Q. How well do you know him?

A. You know, just "Hello Arnold"; that is all.

Q. Has he been to your apartment lately?

A. No; not since I lived up on 83rd Street.

Q. Has he ever been to your apartment?

A. Yes sir; on 58th Street.

Q. That is quite some time ago?

A. He is a friend of mine; not of Mr. Arnold's.

Q. Have you had any transactions with him recently?

A. No sir; never at any time.

Q. Did you gamble with him?

A. Never at any time—oh yes; we did once I think, fifty cent ante, or something my mother and he and I, up in my house.

Q. Has he got any stocks or bonds now which you gave him at any time?

A. No sir.

Q. Or any money?

A. Why should I ever give him any money or stocks or bonds or anything?

Q. I don't know; just answer the question.

A. I should say no, I know; but I like to talk.

Q. Do you know Louis Bleet, B-l-e-e-t; do you know him?

A. I don't think so; I am not sure.

Q. You don't know whether you know him or not?

A. I am not sure.

Q. When did you see him last?

A. I don't know if I know him.

Q. Do you know Fred. Jackson?

A. Yes sir.

Q. How well do you know him?

1187 A. Only met him once or twice.

Q. When did you see him last?

A. I have never seen him, but I got a letter from him about two months or three months ago.

Q. What business is he in?

A. I don't know; I think he was in that automatic fire thing with Mr. Arnold, fire detector.

Q. Do you know where he is now?

A. No, I do not.

Q. Do you know where his office is?

A. I don't know if he has an office.

Q. You don't know where he lives?

A. No; I have not seen him in three or four or five years, since that automatic fire detector thing.

Q. Do you know Philip Kastel, K-a-s-t-e-l?

A. Yes sir.

Q. When did you see him last?

A. Six or seven weeks ago.

Q. Where?

A. In Reisenweber's that night I was there; he joined our party.

Q. Have you heard from him since?

A. No sir.

Q. Have you had any letters from him since?

A. No sir.

Q. Or any telephone messages?

A. No sir.

Q. Do you know a man by the name of Ed. Strong?

A. Yes sir.

Mr. Kahn: Just a minute, Mr. Myers. I have not made any objection here for some time. Everybody under the Sun, apparently, is being inquired into or about, and I am making objection to it. I do not see any materiality or relevancy to any of this.

Mr. Myers: We only want to find out who these confeder-
1188 ates of the bankrupt are; that is all.

(Question read.)

The Commissioner: Answer the question.

The Witness: I do.

Q. How long do you know him, Miss Brice?

A. A friend of his came up and had some clothes made at the shop, a lady friend you see, and we were making a lot of clothes for her, and I met her at Reisenweber's and she was with him, and she introduced me to him.

Q. When did you see him last?

A. He went up to the bank, the Pacific Bank, with me.

Q. When was that?

A. The next day after I got the checks, when it said "Funds unavailable," And I went to the Pacific Bank and asked them why they were unavailable.

Q. Do you remember what date that was?

A. No, I do not. I think the day after I got the checks; and they asked me who was with me and I told them Mr. Strong, and I went up there.

Q. That was after February 13th?

A. Yes, sure; that was after that check was deposited.

Q. February 13th 1920?

A. Yes I knew Mr. Strong is a lawyer, and I wanted to talk to somebody right away and tell them about it; and I called him up and spoke to him; and he went up there with me. I called him up and I met him at the Claridge; he lives there.

Q. He is from Cleveland, is he?

A. (No answer.)

Q. Do you know a man by the name of Drucker?

A. Yes sir.

Q. What is his first name and where does he live?

A. Charles Drucker.

Q. Where does he live?

1180 A. On 86th Street; I don't know the number.

Q. East or West?

A. West.

Q. Do you know where he comes from? Do you know where he lives?

A. I don't know what you mean.

Q. Do you know what City he comes from?

A. New York.

Q. How?

A. He is a New Yorker.

Q. Doesn't he come from Cleveland?

A. I don't know.

Q. How?

A. I don't know.

Q. Do you know David Sullivan?

A. No sir.

Q. You have never seen him?

A. I don't know him. How would I know when I would see him.

Q. You never received any letters from him?

A. I don't know the man.

Q. You never heard your husband talk about him?

A. No sir.

Q Do you know Joseph Gluck?

A. No.

Q. Did you ever hear your husband talk about Joseph Gluck?

A. Never heard the name until I got into this and read the papers.

Q. Miss Brice, did you ever live on West End Avenue?

A. No.

Q. 447 West End Avenue?

A. No sir; I never lived there.

Q. Is this your signature, Miss Brice? (Indicating.)

A. No sir; you know, you can see it on the other things.

Q. Did you ever have an account in the Bowery Savings Bank?

A. No sir.

Q. Did you ever live at 86 West 103rd Street?

A. No sir.

Q. Is this your signature? (Indicating.)

A. No sir.

Q. Do you know a man by the name of Sam Ginsberg?

A. No sir.

1190 Q. Of Cleveland, Ohio?

— No, sir

Q. You never heard of him?

A. No sir.

Q. Do you know a man by the name of David Eschner?

A. No sir.

Mr. Myers: We have a number of other witnesses subpoenaed, Mr. Commissioner, and we have some other material to examine in respect to this witness before we can conclude with her, and we therefore wish to go on now with Mr. McGee, and then at 2 o'clock this afternoon, with other witnesses, and take up Miss Brice later, on Saturday morning. We have had some difficulty in having certain banks to get their transcripts in shape and getting the material; they are trying all they can to get the material together for us; and we have various leads which have to be developed and we will need tomorrow or Saturday for Miss Brice's testimony; but we will go on to-day with other witnesses.

The Commissioner: Make it Monday then for Miss Brice.

Mr. Myers: We will leave it to Miss Brice whether she wants to return on Saturday or Monday.

The Witness: I would rather have Monday.

Mr. Kahn: With respect to this afternoon, Mr. Commissioner, I have an important meeting at 3 o'clock; which I put over from eleven o'clock this morning until 3 o'clock this afternoon and I have got to be there at 3 o'clock. I must leave this afternoon, for I have got to be there at 3 o'clock; I must leave at a quarter of three to keep that important appointment.

(Miss Brice instructed by the Commissioner to return on Monday, March, 1st, 1920, at 2 p. m., without further notice, and to produce at that time all papers in her possession in reference to the

1191 Huntington property, and other documents requested by Mr. Myers.)

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

1192 At 1 p. m. the hearing before Commissioner Gilchrist was resumed as follows:

WILLIAM H. WASHER, being first duly sworn by Commissioner Gilchrist, testified as follows:

Examined by Mr. Myers:

Q. What is your full name?

A. William H. Washer.

Q. Where do you live?

A. 200 West 86th Street.

Q. What business are you in?

A. Restaurant business.

Q. Do you know Nicholas Arnstein?

A. Yes sir.

Q. How long have you known him?

A. Probably—well, I don't know whether I have known him two years; about two years I should judge; a year and a half or two years; I don't remember.

Q. What was the nature of your business transactions with him?

A. He has been in my place several times, a good many times.

Q. Has he ever left any money or property with you?

A. No sir.

Q. For safe keeping or otherwise?

A. No sir.

Q. Have you ever been in any business transactions with him?

A. No sir.

Q. Or with his wife?

A. No sir.

Q. You know his wife?

A. Through meeting her there in the place.

Q. Well, under what name did Mr. Arnstein travel that you knew him?

A. Arnold.

1193 Q. Did you sell him any wines or liquors, or give him any wines or liquors during the past two or three months?

A. No sir.

Q. Have you ever been to his home at Huntington, Long Island?

A. Yes sir.

Q. How recently?

A. Last Fall; I don't remember just when.

Q. What month?

A. Well sir, it seems to me it would be in December.

Q. In December?

A. I think it must have been in December.

Q. Did you take any wines or liquors to his home in Huntington at that time?

A. No sir.

Q. Were you just there visiting?

A. I went down with him in a car; he asked me; he was taking down a load of bric-a-brac that his wife had got.

Q. Didn't you and Mr. Arnstein take down a load of wines and liquors to his home at Huntington, Long Island?

A. No sir.

Q. Not at any time?

A. Not at any time.

Q. So you never took any wines or liquors to Mr. Arnstein's home at Huntington at any time?

A. No sir.

Q. And you do not know of his having taken any there?

A. No sir.

Q. And you do not know of anybody else having taken any there?

A. No sir.

Q. At any time?

A. At any time.

Q. Did you ever buy any wines or liquors with Mr. Arnstein through anyone?

A. No sir.

Q. Well, have you had any business transactions with him at all, at any time?

A. In what way?

1194 Q. In any way.

A. Why, I sold him some stuff last Summer.

Q. To what extent?

A. I just don't remember.

Q. Approximately?

A. Well, I really don't remember how much it was; but I sold him some different stuff, Scotch whiskies and Creme de Menthe and stuff like that; a lot of odd things.

Q. To what extent? Wasn't it billed?

A. Sir?

Q. Didn't you give him a bill?

A. No sir.

Q. Well, was that in cash or by check?

A. Check.

Q. Now you must recall some amount. Was it \$1,000 or \$500 or more or less?

A. No; I don't remember just what it was.

Q. Was it more than \$1,000?

A. I don't remember, sir.

Q. Was it more than \$100?

A. It certainly would be, yes.

Q. Was it more than 200?

A. I should think it would be; but I don't remember; I am trying to get that through my mind.

Q. Was it more than 500?

A. No, I don't think so.

Q. It was less than \$500?

A. I think so, yes.

Q. All together; last Summer?

A. Yes sir—I sold him two lots of stuff.

Q. Now the two lots aggregating less than \$500?

A. No; I think it was more than that.

Q. Well now, how much?

A. I really don't remember. The checks will show.

Q. Were the two lots more than \$1,000?

A. Yes, I would not be surprised if it was.

Q. Was it more than \$2,000?

A. No.

1195 Q. Was it 1,500?

A. No; I don't remember what it was.

Q. Well, how much? What is your best recollection?

A. Well, my best recollection is that I don't remember what the checks were.

Q. Well, you deposited the checks?

A. Yes sir.

Q. In what bank?

A. My bank.

Q. Which bank is that?

A. Produce Exchange.

Q. And you entered the transactions on your books?

A. Certainly.

Q. Your books will show the extent of the transactions, will they not?

A. I don't think so; I would not think they will.

Q. Didn't you enter those sales on your books?

A. Well, I entered it as a sale; I got it in the bank book I suppose, at the time; I don't remember that.

Q. Don't you keep a cash book and journal?

A. Yes sir.

Q. And Ledger?

A. No sir, we don't keep a ledger.

Q. What books do you keep?

A. I just keep the books that I keep myself.

Q. What; cash books?

A. Cash book.

Q. You had that transaction with Mr. Arnstein entered in your cash book, did you not?

A. His sales; the stuff that I sold him?

Q. That you sold him or to his wife or to any member of his family, or to anyone on his behalf.

A. No; I don't think so.

Q. You say they were not entered on your books?

A. I don't think so, no sir.

Q. But you got paid in checks?

A. Yes sir.

1196 Q. But you got paid in checks?

A. Yes sir.

Q. And you deposited the checks?

A. Yes sir.

Q. And your best recollection is that all your transactions with Mr. Arnstein and with the members of his family, did not exceed \$1,500?

A. Yes sir.

Q. At all times?

A. At all times. I do not remember what the checks were.

Q. There was no cash at all at any time?

A. No sir.

Q. Now, did you have any stock transactions with Mr. Arnstein or his wife?

A. No sir.

Q. Or any bonds?

A. No sir.

Q. Did you enter into any business transaction with him or his wife at any time, of any kind?

A. Not at all, no sir.

Q. Have you ever been to their home in New York?

A. At the time we came back from Huntington, I was down there twice you know; I was there once with him and his wife and the other Nick and his wife.

Q. What other Nick?

A. Nick Cohen.

Q. Nick Cohen?

A. Yes sir.

Q. Nick Cohen and his wife?

A. Yes sir.

Q. When was that?

A. Well, that must have been last Fall.

Q. In December?

A. About.

Q. Before or after Christmas?

A. I think it was a good deal before Christmas.

Q. It was before Christmas?

A. Yes sir. It was on a Sunday.

Q. You went down with Mr. and Mrs. Nick Cohen and Mr. and Mrs. J. W. Arnold, or Nick Arnstein; is that right?

A. Yes sir.

1197 Q. Did you take any stock of wines and liquors down at that time?

A. No sir.

Q. Or since?

A. No sir.

Q. Have you frequently been to his home at Huntington?

A. I was there a second time. The second time I went with him alone.

Q. When was the second time; after Christmas?

A. Well, I should judge it was around Christmas.

Q. And that time you did take down a stock of wines and liquors, did you not, the second time?

A. No sir; only one bottle.

Q. What?

A. He took a bottle along.

Q. You do not recall going down with Mr. Arnstein and taking down a large stock of wines and liquors, and the conveyance having broken down?

A. No sir, I was there when the conveyance was broken down, but there was no liquors there.

Q. When was that?

A. Why, that was around Christmas I should say.

Q. What conveyance was that?

A. It was an ordinary car; a new car that he had.

Q. An automobile?

A. An automobile; a Cadillac car; passenger car; four-passenger, it seems to me; four or five-passenger.

Q. You say there was no liquor taken down at that time?

A. No sir.

Q. Do you know where that automobile is now?

A. I knew at that time.

Q. Where?

A. On 86th Street, off Broadway, where I went to show some friends of mine what the accident meant you see, when we got home.

Q. That was Mr. Arnold's car, not yours?

1198 A. Oh, it was not my car; it was his car.

Q. Do you know the name of the place where it is kept?

A. I really don't know; I don't know the name, but I know where the garage is.

Q. Between what avenues?

A. Between Broadway and Amsterdam Avenue.

Q. On 86th Street?

A. No; on 82nd Street; it may be 81st; right next to the Catholic Church.

Q. Do you know where Mr. Arnold keeps his bank accounts?

A. No sir.

Q. Or where his wife does?

A. I don't know anything about them.

Q. Do you know where either one keeps their safe deposit boxes?

A. No sir; I know nothing about that, sir.

Q. Do you know on what bank those checks were drawn that Mr. Arnold gave to you?

A. I don't remember that either.

Q. Have you seen Mr. Arnold in the past two weeks?

A. No sir.

Q. Have you seen his wife during the past two weeks?

A. I saw her here the other day; that is about the third time I ever saw the woman.

Q. Have you had any communication of any kind with the bankrupt in this proceeding during the past two weeks?

A. If I had what?

Q. Any communication of any kind with the bankrupt during the past two weeks?

A. No sir.

Q. You do not know where the bankrupt is?

A. You mean Arnold?

1199 Q. Yes.

A. I certainly do not, no sir.

Q. You have not seen or heard of him during the past two weeks?

A. No sir.

Q. You have not received any telegram from him?

A. No sir.

Q. And you have not telegraphed to him?

A. Well, no sir; that is none of my business. I don't know him at all well enough.

Q. Now, outside of the checks which you deposited in your bank account in the Produce Exchange Bank, you have no record of any kind in your books of your liquor transactions with Mr. Arnstein?

A. No sir; I have no books.

Q. Well, you keep a cash book?

A. Of that kind; I keep a cash book.

Q. And those transactions are not entered in that cash book?

A. No sir.

Q. Well, why was that?

A. I don't make a business of that.

Q. I beg pardon?

A. I don't sell anything in that way. I really never sell anything in that way.

Q. Well, you have been selling liquors to your customers, haven't you, in quantity?

A. No, not very much to speak of.

Q. Didn't you, before the sale of liquor was stopped, sell liquor to various of your customers in quantity?

A. Well, not any amount of quantity, no.

Q. Well, in a case; anything more than a bottle?

A. Well, if a person wanted a case, I suppose I would have sold it to him.

Q. You sold quite a number of cases before the sale of liquor was stopped, did you not?

A. Well, I just can recall several parties that I sold stuff to,
1200 yes sir.

Q. And all of those transactions, with the exception of Arnold transactions, are entered on your cash book, aren't they?

A. No sir; I would not enter anything like that. If I sold a man a case, I would take his check for it, and that is the end of it.

Q. You made no other entry on your books of any kind on those transactions with any of those customers?

A. No sir.

Q. Those sales were profitable to you? You made money on those transactions?

A. Well, I suppose, yes sir.

Q. And you keep a record somewhere of your profits on all your transactions, do you not?

A. Well, I have never made a business of selling things in that way. I carry books, on our register, the amounts we take in, if that is what you mean.

Q. You had to make up a statement of your profits for the Income Tax authorities, did you not?

A. Not yet.

Q. But you will have to do that?

A. Yes sir.

Q. And you say you have no record of those transactions, showing your profits?

A. On those particular sales?

Q. On all the sales of all these cases of goods.

A. No, I have not.

Q. You made a great many sales, did you not?

A. No sir.

Q. Well, how many cases, approximately did you sell that way just before the sale of liquor was stopped?

A. Well, I don't just recall.

Q. 100?

A. No sir.

Q. 50?

A. I don't recall, sir.

By Mr. Zalkin:

Q. How could you properly record your profits to the In-
1201 come Tax without keeping a record of your profits?

A. I take it from the bank book I suppose.

Q. You cannot tell your profits from the bank book, can you?

A. You can tell about what—you get your sheet every month; that is about as good.

Q. You do not pay the tax on your receipts; you pay the tax on your profits.

A. I know that, yes sir.

Q. How can you ascertain the profits that you have made on these transactions without keeping a record of it?

A. Well, on these particular things, I have no record of it. I have books; you can see them if you want to.

Q. Have you made a profit on the Arnstein sale?

A. I suppose there would have been a profit; I don't just remember how much it was sold for.

Q. So the Government won't get any tax on that profit?

A. I don't know about that.

Q. Well, will they?

A. I don't know about that.

Q. Well, is there any way that you can determine what your profit was?

A. No sir; I could not tell you just now.

By Mr. Myers:

Q. Do you know anyone by the name of Ed. Strong?

A. I met him through Mr. Arnstein.

Q. How recently?

A. I met him a week ago last Monday night, or Tuesday night.

Q. Where?

A. In my place.

Q. Who is Ed. Strong?

A. I really don't know.

Q. Is he a lawyer?

A. I was was introduced to him by Mr. Arnstein; he told me he was a lawyer from Cleveland. I don't know; maybe he is from some place else. I don't know anything about it.

1202 Q. Will you please state what conversation you had at that time with Ed Strong?

A. Nothing in particular.

Q. Well, state what it was?

A. Well, I was introduced to him; he is a stranger to me; I never saw the man before. That is, I have met him several times with Arnstein and another man; four of them used to come in there together; Arnstein, Cohen—

Q. (interrupting): Nick Cohen?

A. Nick Cohen; and Strong; and another man. I was introduced to him, but I don't remember his name.

Q. Samuel Ginsberg?

A. I don't know what his name was.

Q. Fred Jackson?

A. I don't know what his name was.

Q. Phil. Kastel?

A. He told me that he had a string of stores in Pennsylvania, of some kind; I don't know what his name is.

Q. He keeps a store?

A. A string of stores; a string of department stores, or something of that kind, in Pennsylvania; I really don't know.

Q. Well, it is important for us to get the name; cannot you tell us his name?

A. No. I made it as plain as I could yesterday to the Court, that it is a long way around; but there was a lady that used to come into our place that had a police dog, and I saw that Arnold with that police dog, and I knew it, and he told me that he got it from a woman, and he introduced me to the husband, and this was the husband. So that you can easily find out; the man that owned the dog is the man that I am talking about. I don't know what his name was, outside of that.

Q. Have you a safe deposit box?

A. Yes sir.

1203 Q. Where?

A. In the same bank.

Q. Have you more than one?

A. No sir.

Q. Have you more than one bank account?

A. Yes sir.

Q. Where?

A. I had a little deposit in the Broadway Savings Bank—The Broadway Bank, up——

By Mr. Zalkin:

Q. Broadway Central?

A. Broadway Central, yes sir.

By Mr. Myers:

Q. Have you ever received any stocks or bonds or property of any nature or kind or description from Arnold?

A. No sir.

Q. Who is the bankrupt here?

A. No sir.

Q. Or from his wife?

A. No sir.

Q. Who is known as Fannie Brice?

A. Absolutely not, sir.

Q. Or from Ed. Strong?

A. No sir.

Q. Or from Nick Cohen?

A. No sir.

Q. Or from the man who owns the dog which you have described?

A. No sir.

Q. You have no securities of any kind in your strongbox except your own?

A. No sir.

Q. Did you cash any checks for Arnold or his wife?

A. I have cashed a few checks for Arnold.

Q. How recently?

A. Oh, I suppose it was—I could not just recall the dates.

Q. Now, when you saw Mr. Arnold and his wife a week ago last Monday, was there any talk as to where he was going?

A. A week ago last Monday? I did not see him a week ago last Monday—Strong you are talking about?

Q. Yes.

A. Oh, I did not ask the man where he was going. I said "How do you do" to him; that is all.

Q. How recently did you see Mr. Arnold?

1204 A. I don't think I have seen Arnold in a month; maybe it is three weeks; I don't remember the time when I saw him last.

Q. Where did you see him last; in your place of business?

A. In my place, yes.

Q. Did he say where he was going?

A. No sir.

Q. How recently have you seen his wife, except in Court here?

A. When I went to the country with Arnold, when the car turned

over, we stopped at their house coming back, and I have not seen her since; except I met her here.

Q. Who drove the car at that time?

A. Arnold himself.

Q. Has he a chauffeur, at all?

A. Not that I know of.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

1205 EUGENE F. MCGEE, being first duly sworn by Commissioner Gilchrist, testified as follows:

Examined by Mr. Myers:

Q. Will you please state your full name?

A. Eugene F. McGee.

Q. And your address?

A. 220 Ft. Washington Avenue.

Q. You are a member of the Bar of the State of New York?

A. I am.

Q. Are you the attorney of the bankrupt in this proceeding?

A. I am a member of the firm of Fallon & McGee, who represent the bankrupt.

Q. When were you retained?

Mr. Kahn: I object to that, if your Honor please, —

The Commissioner: Objection overruled.

Mr. Kahn: Just a moment, your Honor; I think I have the right to state my grounds on the record. I want to object on the ground that this calls for a confidential communication between attorney and client.

Mr. Myers: This man is a fugitive from justice; there cannot be any confidences in a criminal offence; that is Constitutional Law; and a lawyer cannot claim any privilege when he is connected with a criminal.

The Commissioner: Objection overruled. Proceed.

1206 Q. (Question read) Will you answer the question, Mr. McGee?

A. What is that question? When was I retained?

The Commissioner: When were you retained?

The Witness: I was not retained.

Q. Then you do not represent the bankrupt?

A. The firm represents him.

Q. When was the firm retained?

A. I think Saturday.

Q. By whom?

A. By the bankrupt.

Q. Where?

Mr. Kahn: I object to the question upon the grounds heretofore stated.

The Commissioner: Objection overruled.

Mr. Kahn: This witness, your Honor, is an attorney; he is certainly——

The Witness (interrupting): I refuse to answer that question, on the ground it is a confidential communication between client and attorney.

Mr. Myers: I ask your Honor to rule that there is no confidential communication where a crime has been committed.

Mr. Kahn: There is no evidence here yet.

Mr. Myers: Well, there is evidence here that a crime has been committed.

1207 Mr. Kahn: Mr. Myers may suppose a crime has been committed.

The Commissioner: That is not a privileged communication, where he was retained; the place.

Mr. Kahn: Certainly a communication that has relation as between attorney and client is privileged. Your Honor, we would like to reserve that question for ruling by the Court as to whether we have to answer that or not.

The Commissioner: That is not a privileged communication at all; where he was retained.

The Witness: We reserve the right to go before the Judge on that.

Q. Who was present when you were retained; who were present?

A. I refuse to answer.

Q. On the ground that the answer will tend to degrade or incriminate you?

A. On the ground it is a confidential communication between attorney and client.

Q. We cannot determine that until we find out who were present. Will you please state who were present?

Mr. Kahn: Just a moment. I object to the statement of counsel.

1208 The Commissioner: Mr. Kahn, this witness has not been asked any communication whatever. It is perfectly ridiculous to my mind——

Mr. Kahn (interrupting): Mr. Commissioner, as I understand the rule, it relates not only to communications, but also to transactions.

The Commissioner: There is no transaction at all asked about; he is asked for the place; that is all. We have not got to the point, Mr. Kahn, where that objection is good.

Mr. Kahn: In my opinion, there is; and I respectfully ask that this question be reserved for decision by the Court.

The Commissioner: Next question.

Q. Where is the bankrupt?

Mr. Kahn: I object to that upon the ground that that is clearly a privileged communication between attorney and client.

The Commissioner: Objection overruled.

Mr. Kahn: I except.

Q. Will you answer that?

Mr. Kahn: No; we are going to reserve that.

The Witness: I reserve that for the Court to pass on.

1209 Q. What do you think this is? This is the Court, isn't it?

Mr. Kahn: We are not called upon to answer.

The Commissioner: If that is the attitude, you are going to take, perhaps you had better get instructions from the Court.

Q. When did you see the bankrupt last?

A. Same objection.

Q. Did you see the bankrupt to-day?

A. Same objection.

Q. Did you see the bankrupt yesterday?

A. Same objection.

Q. Have you seen the bankrupt anywhere during the past ten days?

A. Same objection.

The Commissioner: Have you ever seen the bankrupt?

The Witness: Yes.

Q. When and where?

A. In New York City.

Q. When?

A. Same objection.

Q. Where in New York City?

A. Same objection.

Q. Have you seen him in New York City during the past week?

A. Same objection.

Mr. Myers: I ask that this witness be certified to be in contempt of Court. Is that granted, your Honor?

The Commissioner: Yes.

1210 Mr. Kahn: Just a moment, your Honor. I understand the practice to be that a witness can get a ruling of the Court upon objection.

Mr. Myers: I will ask a few more questions, and then we will have a record.

Q. Did you receive any money from the bankrupt?

A. I refuse to answer that, on the ground it is a confidential communication.

Mr. Kahn: The question is: Did you receive any fee from the bankrupt?

Mr. Myers: I did not ask him about a fee; I asked him about money.

Mr. Kahn: I do not see any difference.

The Commissioner: The question is whether you received any money from the bankrupt.

Q. Do you decline to answer?

Mr. Kahn: When?

The Commissioner: At any time.

Q. Do you decline to answer that question?

Mr. Kahn: I object to the question on the ground it is not definite enough; it ought to be limited as to time and purpose. Mr. McGee won't make any objection to answering a question of that sort, I am certain.

1211 Q. Did you receive any money from the bankrupt in this proceeding at any time during the past ten days?

A. No.

Q. At any time during the past thirty days?

A. No.

Q. At any time?

A. No.

Q. Did you receive any money from anyone else for or on behalf of the bankrupt during the past thirty days?

A. No sir.

The Commissioner: Do you confine that to him, or to his firm; which?

Q. Did your firm receive any money, directly or indirectly, from the bankrupt directly or indirectly, at any time during the past thirty days?

A. No; not that I know of.

Q. Well, you know what Mr. Fallon does, don't you, in reference to fees?

A. Sometimes I do; sometimes I do not.

Q. Did you get any written retainer in this case, you or your firm?

A. Not that I know of.

Q. And isn't it a fact that you personally talked with the bankrupt within the past week?

Mr. Kahn: I make the same objection to that, if your Honor please, as made heretofore.

The Commissioner: Same ruling.

1212 Mr. Kahn: Very well; we reserve that question.

Q. You decline to answer?

Mr. Kahn: That is not the question. Just a moment, Mr. Myers. I do not want you to put on the record each time that we decline to answer. We have made it perfectly clear that we reserve the right to have a ruling by the Court on these questions.

The Witness: I object to the question.

Q. Now, isn't it a fact that you decline to say where the bankrupt is?

A. Isn't that a fact?

Mr. Kahn: Wait a moment. Let me hear that question please?

Mr. Myers: He is a lawyer; he is able to take care of himself.

The Witness: Isn't that a fact?

Mr. Myers: This is a witness now; Mr. Kahn has not any standing here, as I understand your ruling.

The Commissioner: As counsel for the bankrupt.

Mr. Myers: This is a witness; Mr. Kahn does not appear for the bankrupt. Mr. Kahn in entering his appearance stated he is appearing for Miss Brice.

Mr. Kahn: I cannot help your understanding, Mr. Myers. I made it very clear that I appeared as counsel for the bankrupt
1213 and Miss Brice.

(Question read.)

Mr. Kahn: Well, that question has been asked, and certainly you know what the answer is; that is being reserved.

Mr. Myers: You said the record was not clear. Now let us make the record clear.

Q. What are you willing to testify to, and what are you not willing to testify to, Mr. McGee, about your knowledge of the whereabouts of this bankrupt? Will you now please state it upon the record?

Mr. Kahn: I object to the question, upon the grounds heretofore stated: That it calls for a confidential communication between attorney and client; and also calls for a conclusion.

The Commissioner: The objection is overruled.

Mr. Kahn: We reserve the right, your Honor, to have that passed upon by the Judge. May it be noted, your Honor, that I except to each of your Honor's rulings?

The Commissioner: Certainly.

Q. Have you, or any member of your firm, received any fee of any kind from the bankrupt in this proceeding, at any time during the past month?

1214 Mr. Kahn: I object to that, if your Honor please, on the ground that it calls for a privileged communication and transaction.

The Commissioner: Objection overruled.

Q. You decline to answer that, Mr. McGee?

A. I have not declined to answer any questions. I reserve ruling as I understand, on all of these questions.

Mr. Myers: The witness says he does not decline to answer.

Q. You either decline or do not. If you say you do not decline to answer, you had better answer the question.

Mr. Kahn: Mr. Commissioner, we have made it very clear to you that all these questions are reserved for ruling by the Court.

Mr. Myers: This is the Court; the Commissioner has been appointed by the Court; this is the Court.

The Commissioner: That is not a communication at all. If he received any money at all from the bankrupt, he is bound to answer. You are wasting time.

Mr. Kahn: Mr. Commissioner, Mr. McGee is a member of the Bar and he knows the Law, and I think he is entitled to have it passed upon by the Court.

The Witness: We are trying to arrange now, as you know, 1215 with the District Attorney, to produce this man; you know just as well as I do.

Mr. Myers: We are not connected with the District Attorney; we are representing the Receiver in Bankruptcy.

Q. Have you received any money from Fannie Brice within the past thirty days?

Mr. Kahn: We object to the question, upon the ground that it is incompetent what they received from Fannie Brice, if they received anything.

The Commissioner: I will sustain that. If on behalf of the bankrupt, all right.

(At this point an adjournment was taken until 2 p. m., at which time counsel and the witness are to appear before Judge Augustus N. Hand for ruling upon questions objected to.)

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

Adjourned to 2 p. m. this date.

1216 In the Matter of NICHOLAS ARNSTEIN, Alleged Bankrupt.

New York, February 26th, 1920.

(At 2 p. m. counsel, the witness, and the stenographer appeared before Judge Augustus N. Hand in his Chambers in the Woolworth Building.)

The questions which were objected to by Mr. Kahn and Mr. McGee, and the grounds of the objections were read to the Court.

The Court ruled that Mr. McGee should state where he was retained by the bankrupt, and as to whether or not any fee had been paid.

The examination of Mr. McGee was resumed before Judge Hand as follows:

1217 EUGENE F. MCGEE recalled.

Examined by Mr. Myers:

Q. Where were you retained by the bankrupt?

A. New York City.

Q. Where?

A. Mr. Fallon was retained; I do not know just where.

Q. In a hotel?

A. I do not know just where.

Q. Well, was it in your office, or Miss Brice's apartment?

A. I think he received a telephone communication.

Q. From the bankrupt?

A. Yes.

Q. Don't you know where he was retained; whether it was in an apartment house or hotel or where?

A. I think at his home.

Q. Where?

A. Mamaroneck.

Q. Was that a Long Distance telephone call?

A. I do not know.

Q. Did you talk to the bankrupt over the Long Distance?

A. I did not.

Q. Did you talk to the bankrupt over the Long Distance at any time in the past week?

A. I have not.

Q. Do you know that the bankrupt has been in Cleveland, Ohio during the past week?

The Court: You will have to answer that.

1218 A. Do I know whether he has been there or not? Yes.

Q. Were you with the bankrupt in Cleveland this week?

A. Yes.

Q. Didn't you leave New York Monday night to visit the bankrupt in Cleveland?

A. Yes.

Q. And you brought the bankrupt back with you to New York City yesterday; isn't that right?

A. I did not.

Q. Did you leave him in Cleveland?

A. Yes.

Q. At the Hotel Winton?

A. Yes.

Q. Room 604?

A. No; I was not in Room 604.

Q. What room in the Hotel Winton?

A. The lobby of the hotel.

Q. Is he there now?

A. I do not know.

Q. When did you last see him there?

A. That day.

Q. Monday night or Tuesday?

A. Tuesday.

Q. He was there all day Tuesday? How long were you with him?

A. About an hour.

Q. And did you receive any money from him?

A. No.

Q. Did you receive any papers?

A. No sir.

Q. Were you retained then?

A. Yes—well, I was retained Saturday when Mr. Fallon told me to go there.

Q. You were retained previously you say, when this man
1219 called up Mr. Fallon at his home at Mamaroneck a week ago Saturday?

A. Saturday or Sunday.

Q. That is last Sunday?

A. Saturday, Sunday or Monday; one of those three days.

Q. He retained Mr. Fallon over the telephone; is that right?

A. That is right.

Q. Then you left Monday night and talked with the bankrupt
at the Winton; is it W-i-n-t-o-n?

A. Winton; W-i-n-t-o-n.

Q. At Cleveland; then you left the bankrupt there Tuesday; is that right?

A. That is right.

Q. Do you know where he is now?

A. No, I do not.

Q. Have you heard from him since Tuesday?

A. Not since Tuesday.

Q. Has Mr Fallon, to your knowledge?

A. Not to my knowledge.

Q. Has anyone in your office heard from the bankrupt since Tuesday?

A. Not to my knowledge.

Q. Have you had any Long Distance calls, you or Mr. Fallon or anyone connected with your office, from the bankrupt since last Tuesday?

Mr. Kahn: If your Honor please, that is the very point we discussed.

Mr. Myers: I am not asking for the contents of the con-
1220 version.

The Court: I will allow that question. You cannot ask him what the communications were; but I will allow any matters that divulge the fact that there were communications.

A. Not to my knowledge.

Q. Were you retained by the bankrupt in this proceeding or in any contemplated criminal proceedings?

A. Both.

Q. You told him of the pendency of these proceedings; is that right?

A. Yes.

Q. And you were retained and authorized to appear for him in these bankruptcy proceedings and in any contemplated criminal proceedings; is that right?

A. That is right.

Q. Did you see Miss Fannie Brice, the bankrupt's wife, after your return to New York yesterday?

A. Yes sir.

Q. Where?

A. At the Commodore Hotel.

Q. When?

A. Yesterday.

Q. I mean morning or afternoon or evening?

A. Morning.

Q. In her apartment there, or your apartment, or where?

A. The mezzanine floor.

Q. And did you have any talk with Miss Brice?

A. I did.

Q. You are not Miss Brice's attorney, are you?

A. No.

1221 Q. Will you please tell the Court what you said to Miss Brice and what she said to you?

Mr. Kahn: That is objected to, if your Honor please, upon the ground that that is clearly an improper question.

The Court: Why?

Mr. Kahn: First, it does not relate to the acts, conduct or property of the bankrupt.

The Court: It relates to finding him for examination. I will allow it.

Mr. Kahn: I except, your Honor.

The Witness: I told Miss Brice that I had been retained by her husband to represent him in the proceedings.

Q. Did you tell her where you were retained?

A. I did not.

Q. You did not tell her where you saw her husband?

A. I did not.

Q. And she did not ask you where her husband was?

A. She said to me "I do not want to know." And I said "If you do not want to know, I will not tell you." Because I did not expect to be examined here today, but I knew she was about to be called.

Q. And you did not want her to be able to tell the Court where her husband was hiding?

1222 Mr. Kahn: I object to that question.

Mr. Myers: Where her husband was; leave out the word "hiding."

Mr. Kahn: I object to that question as to form: "You did not want her to know." It calls for the operation of the mind; does not in any way relate to or affect his assets or conduct or property.

The Court: I will sustain the objection.

Q. Will you please state fully, in your own way, Mr. McGee, just what you said? Everything you said to Miss Brice and everything she said to you.

A. That is all. She wanted to know how she would know I was his attorney. I said "We are trying the Fritz case. I am the attorney, and I am going up to talk to Mr. Fallon, my partner, "to see if we could get into communication with Mr. Dooling, of the District Attorney's office, and arrange to surrender Arnstein. And while she was there I called up Mr. Dooling and asked Mr. Dooling about bail.

Q. You offered to put up \$50,000 bail, didn't you?

A. I did not offer to put up anything, because I haven't anything to put up for.

Q. Did Mr. Fallon, to your knowledge, offer to put up \$50,000 bail?

A. No; I spoke to Mr. Dooling over the phone and I asked Mr. Dooling what bail he would accept; he said "\$100,000." I said "Can't you reduce that to 50?"

Q. Had you made arrangements to get \$50,000 from the bankrupt?

A. To get \$50,000 from the bankrupt?

Q. Yes.

A. No.

Q. Did you make arrangements to get \$50,000 any place?

A. No.

Q. Well, you had arranged with Mr. Dooling, had you not, to put up \$50,000 bail if he would accept \$50,000 bail?

A. We would try to arrange for it. I will try to arrange it as soon as I leave here.

Q. Hadn't you, when you spoke to Mr. Dooling, made some definite arrangement looking to getting \$50,000 bail?

A. No. As soon as I leave here I intend to try to arrange bail.

Q. I am asking you what you had done about that before you spoke to Mr. Dooling?

A. I had not arranged any bail.

Q. Had you spoken to anyone at all about bail for this man, before you spoke to Mr. Dooling?

A. No.

Q. Did the bankrupt tell you where he had any property?

Mr. Kahn: I object to that.

The Court: Objection sustained.

Q. Do you know where the bankrupt is now?

A. I do not.

1224 Q. And if Mr. Dooling were ready to accept bail upon your own terms, you would notify him, wouldn't you?

Mr. Kahn: Wait a minute; I object to that, if your Honor please. That is not a question.

The Court: I will allow that question.

Mr. Kahn: I except, your Honor.

Q. (Question read.)

A. No, I would not.

Q. What would you do to locate your client?

A. I would not do anything.

Q. Didn't you have some understanding with your client when you left Cleveland, as to how you would notify him when you wanted him?

Mr. Kahn: I object to that.

The Court: Objection sustained.

Q. Did you or your firm receive any fees of any kind from the bankrupt, directly or indirectly, in the past week?

A. No sir.

Q. Have you arranged with the bankrupt, or anyone else, for a fee from the bankrupt in this proceeding?

Mr. Kahn: That is objected to, if your Honor please.

The Court: Objection sustained.

Q. Have you any money or shares of stock, or bonds, or any property of any kind, nature or description, which you received directly or indirectly from the bankrupt?

A. No sir.

Q. Or has Mr. Fallon, to your knowledge?

A. No sir.

Q. Did you have a talk with the bankrupt's wife before you left for Cleveland on Monday?

A. I did not.

Q. Did Mr. Fallon, to your knowledge?

A. He did not. The reason I know that is because I introduced him to Miss Brice yesterday up in the Court House. He had never met her before, and I had never met her up to yesterday morning.

Q. Was anybody with the bankrupt when you saw him in Cleveland?

A. No.

Q. Was anyone at the hotel with the bankrupt at all while you were there?

A. I do not know that.

Q. But, so far as you know?

A. I do not know; I was not up there.

Q. So far as you know, you were the only two persons at this hotel, on this matter, at the times referred to?

A. Yes sir.

Q. Do you know how your firm came to be retained?

Mr. Kahn: I object to that, if your Honor please. That calls for a privileged communication and transaction.

The Court: I won't make him give any transactions. He can state who retained him.

1226 Mr. Kahn: He has testified, your Honor, that the bankrupt did.

Q. Do you know who recommended your firm to the bankrupt?

Mr. Kahn: I object to that question.

The Court: Objection sustained.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

Adjourned to Saturday, February 28th, 1920, at 10 a. m.

1227 In the Matter of NICHOLAS ARNSTEIN.

New York, March 17th, 1920.

Hearing resumed.

Present:

The Commissioner.

Mr. Myers.

Mr. Zalkin.

EUGENE F. MCGEE recalled.

Examined by Mr. Myers:

Q. Mr. McGee, you have been sworn in this proceeding, have you not?

A. Yes sir.

Q. You are a member of the Federal Bar?

A. Yes sir.

Q. You are a partner of William J. Fallon?

A. Yes sir.

1228 Q. You were examined heretofore in this proceeding?

A. Yes sir.

Q. You recall that you made a trip to visit the bankrupt, Nick Arnstein?

A. I did.

Q. Will you please say what day you left New York City?

A. It was on a Monday I think, wasn't it? It is in there before, isn't it? (Referring to transcript of minutes.)

Q. No; I mean the second trip when you went away with the Police officers to bring back Nick Arnstein.

A. That was on a Friday. I don't remember the date, but it was on a Friday. (After referring to calendar.) It was Friday night, in February.

Q. Friday, February 27th?

A. If that is the date?

Q. We want to get this right. Was it Friday, March 5th?

A. I was away eleven or twelve days; I came back the following week. It must have been around the 27th, yes.

Q. Friday, February 27th. With whom did you go?

A. Detective Sergeant Mayer.

Q. And who else?

A. Detective Sergeant Gegan; and Detective Sergeant Brown, I think, isn't it?

Q. Brown. How did you come to make that trip? What were the circumstances surrounding it, that led up to it?

A. That is objected to as incompetent and immaterial.

1229 The Commissioner: Objection overruled. Answer the question, Mr. McGee.

The Witness: I do not see how that is material, Commissioner, how I happened to make that trip.

The Commissioner: Any act or conduct in reference to the bankrupt, or his property. This question has to do with any act or conduct or property of the bankrupt. Any inquiry at all in reference to that; we are leading up to that now, Mr. McGee.

The Witness: After talking to Mr. Dooling.

Q. Please state what the talk was?

A. I think it was about 6:30 that evening, I went to Mr. Dooling's office in company with Mr. Fallon. There was present Mr. Dooling, Mr. Unger, and our brother, I don't know his first name.

Q. Howard Myers? (Indicating Howard Myers.)

A. Yes.

Q. Go right ahead.

A. You want the whole conversation?

Q. The entire thing; we want to get somewhere in this case.

A. I don't recall it all, but it finally came down that we would make this trip. I told Mr. Dooling—he asked me if I knew where Arnstein was and I told him I did not know; and he asked me if I was able to get into communication with him. I told him that by being at a certain place at a certain time, I could get into

1230 communication with him.

Q. Did you say what place that was?

A. I did not.

Q. Well now, please state to the Court fully what you said to Mr. Dooling and what he said to you about making that trip?

A. I told him if I could be in a certain place at a certain time, I would receive a communication, indirectly or directly from Arnstein, and that I did not care to go there at the present time, as I had been accompanied by detectives around the City of New York, and I did not care to lead Arnstein into where they could pick him up.

Q. You mean to say you did not want Arnstein picked up?

A. No; I did not say that. I said I was not going to be the cause of him being picked up.

Q. You knew he was wanted by the Police?

A. I knew he was wanted.

Q. And you were not going to do anything to assist in having him picked up?

A. No, I was not going to.

Q. How?

A. I was his attorney.

Q. And you considered that as his attorney——

A. (Interrupting.) I advised him to come in.

Q. When did you do that?

A. And had urged him to come in.

1231 Q. When was that?

A. When I first saw him in Cleveland, whatever day that was, as testified thereto. I think it was around the 22nd or 23rd or 24th.

Q. February 23rd, wasn't it?

A. 23rd or 24th.

Q. Now, you say on or about February 23rd last, at Cleveland, Ohio, at the Winton Hotel—is that right?

A. Yes sir.

Q. You met the bankrupt, and advised him to come back; is that right?

A. I asked him to come back with me.

Q. And he would not do it?

A. He said he would not come back until bail had been arranged. He did not intend to—that was confidential, but I might as well give it to you.

Q. I beg pardon?

A. I will give you this. It is confidential, but——

Q. Go right ahead; just tell us all that took place in Cleveland when you met Arnstein first.

A. No, I won't tell you that.

Q. You told him it would be to his best interests to come back, did you, when you met him in Cleveland?

A. Yes sir. He said he wanted to come back; he had nothing to fear; he was not implicated in this case at all.

Q. But he would not come back?

1232 A. He would not come back until bail was arranged, and he did not want to have anything planted on him by the Surety Company or by the detectives in the case; and he asked me to have his mother—or Miss Brice's mother and brother sleep in the house day and night so that they could not put anything in his house to plant.

Q. You mean Rosa Brice, Fannie Brice's mother?

A. Her mother and brother.

Q. And two brothers, Lew and Phil?

A. Yes; he wanted somebody in that house day and night so that they could not put anything in to plant.

Q. And he then thought they were trying to fasten a crime upon him of which he was not guilty?

A. Of which he was innocent.

Q. With which he had no connection; is that right?

A. Yes, that is right.

- Q. Did anything else take place out there in Cleveland?
A. That is all I am going to tell you.
Q. Go on; tell us everything.
A. Oh no.
Q. You had quite a talk with him, didn't you?
A. Oh no; I only had a few minutes' talk with him.
Q. He told you something about getting bail, didn't he?
A. He told me as soon as bail was fixed he would come in.
1233 Q. I mean he told you how to go about getting bail, didn't he?
A. No.
Q. You discussed the question of bail with him, didn't you?
A. Yes, I discussed it.
Q. Won't you please tell us what took place on the question of bail?
A. I will even go that far, Mr. Myers. He said he was not implicated in the crime; that he was innocent; he wanted to come in; he thought that bail ought not to be over \$25,000 at the utmost, and that was the most he could get.
Q. Did he say where he could get it?
A. No; he did not say a word about getting it.
Q. Did he say that Fannie Brice's mother had considerable real estate in her name?
A. He did not say that, because that is not so.
Q. You know that is not so, do you?
A. I know that is not so.
Q. Do you know that Fannie Brice's mother has real estate?
A. Yes.
Q. You know how much she has too, don't you?
A. Yes.
Q. You have been arranging her real estate with a view of giving bail, have you not?
A. Yes.
Q. What real estate has Fannie Brice's mother?
1234 A. One piece of property in Brooklyn.
Q. Where?
A. About \$10,000 equity. I do not know; some place in Brooklyn.
Q. You know Brooklyn is a large place?
A. I don't know any more than that. I know there is \$10,000 equity in it.
Q. You have been trying to arrange bail with a certain surety company here, have you not?
A. I was trying, with the National for a while, but they would not touch it.
Q. But you have been making efforts to get a surety company to go on Arnstein's bail, have you not?
A. Yes sir.
Q. And you have been bringing certain collateral there for the examination of the surety company; is that right?
A. No, I have not brought anything there at all.
Q. Well, you brought that piece of property there, didn't you?

A. No, I did not bring that piece of property there. It is still out in Brooklyn.

Q. Didn't you bring the deeds down, and the mortgages?

A. No, I did not.

Q. You did not bring any papers there at all to the surety company in connection with that bail?

A. Nothing at all.

1235 Q. Whom did you see in connection with the surety company?

A. That has nothing to do with Arnstein.

Q. Oh yes it has; it has to do with his property.

A. I object to that question. That has nothing to do with the whereabouts of the bankrupt or anything else.

Q. We claim this to be the bankrupt's property.

The Commissioner: Answer the question, Mr. McGee: Whom did you see?

The Witness: Who did I see?

The Commissioner: Yes; that is not objectionable.

The Witness: Well, I haven't any objection to it. The only objection I have is because it is immaterial.

The Commissioner: Well, the point of the thing is, who it was of the surety company; what surety company it was. I will allow that.

The Witness: I object to that, and ask for a ruling.

Mr. Myers: You have got a ruling. Commissioner Gilchrist has been appointed the Judge here. He is not a figurehead here. He is the Judge.

The Witness: I understand that, but I ask that it be passed upon by the Court.

Mr. Myers: This is the Court.

The Commissioner: Do you want to appeal to the Court?

1236 The Witness: Yes.

The Commissioner: Next question.

The Witness: That has got nothing to do with Arnstein.

Q. Yes it has; you have got to answer; you are simply delaying this inquiry.

A. No; I will give you anything you want to know.

Q. Tell us all about the piece of property of Mrs. Brice's.

A. I don't know anything more about it except there is a 10,000 dollar equity in it.

Q. What other property did you examine with a view of giving bail?

A. Nothing.

Q. Wasn't there some other real property that you examined and offered to the surety company?

A. Nothing.

Q. Some jewelry?

A. Yes.

Q. What jewelry?

A. Miss Brice's jewelry.

Q. Not that which is locked up in the safe deposit box, you were not going to give them, were you?

A. I don't know where it is. I only know she has so much jewelry.

Q. Do you know that she has testified that her jewelry is locked up in a safe deposit box under order of this Court?

A. She did not testify to any such thing.

Q. She did not?

A. No.

1237 Q. Let me read it to you.

A. I was here when she testified to that.

Q. I am reading from Miss Brice's testimony, Mr. McGee, page 43:

"Q. Have you any safe deposit box?

A. I have.

Q. Where?

A. At the Lincoln Trust.

Q. Where is that?

A. 72nd Street & Broadway.

Q. Is that in your name?

A. Yes sir; Fannie Brice.

Q. Is that the only safe deposit box that you have?

A. Yes sir.

Q. Will you state what is there?

A. A gold vanity bag; a gold cigarette case; and a mesh bag.

Q. And anything else?

A. No sir.

Q. When were you to that box last?

A. I don't think in three or four months. I lost the key; they can tell you that up there."

And on page 49:

"Q. Did you have any safety deposit box with J. W. Arnold before you married him?

A. I guess it was; you know when I was married; it is there, isn't it?

Q. Did you have a box with Mr. Arnold before you were married to him; a safety deposit box anywhere?"——

A. (Interrupting.) What good is this going to do anyway? I don't know what jewelry she is going to put up.

Q. Just a minute please; let me finish.

"A. Yes, I did; that is right; that is where my bank is, you know; where my money is.

Q. Then you opened this account, this safety deposit account in the United States Safety Deposit Co. with Mr. Arnold, before you were married to him?

A. That is right, absolutely.

Q. What did you place there at that time?

A. Well, I got it to put in my insurance papers, and he was going to get insured; that is why we were going to have it together; in case he died I could get the insurance, and in case I died he could get it.

Q. What insurance papers did you put in there?

A. My insurance papers.

Q. What insurance papers?

A. Well, I got my apartment insured, you know, and my electric; and my life; that is what I have got.

Q. What did he put in?

A. Well, he was going to be insured, but he never got to do it.

Q. So that everything that is in there belongs to you?

A. Well, there is nothing in there.

Q. When did you take them out?

A. I don't know; whenever it says there; I don't remember. It will say there; they put it down every time you make a visit.

Q. Now, you have taken out insurance on jewelry very recently, have you not?

A. That never went through.

Q. Didn't you take out a policy for \$27,000 on jewelry within the past sixty days?

A. Mr. Arnold was supposed to do that for me; that was never done. He was supposed to send Mr. Arnold a bill how much it would be—

1239 Q. Which safe deposit box have you got all this jewelry in?

A. I have got it home.

Q. \$27,000 worth of jewelry?"—

A. (Interrupting.) Well, that settles it, doesn't it?

Q. (Continuing:) "A. I don't know; you will have to find that out."

Now, was that the jewelry that you were to put up with the surety company?

A. I don't know; whatever jewelry she had.

Q. Can you state what it was?

A. No.

Q. Didn't you list it?

A. No.

Q. Whom did you see of the surety company?

A. That is the same question.

Q. Was it Mr. O'Leary?

A. No use making him famous.

Q. Well, isn't that a fact?

A. What?

Q. That it was Mr. O'Leary?

A. I said that is the same question.

Q. You refuse to answer that, on the ground it is immaterial to this inquiry?

A. Yes sir.

Q. And that is your only objection?

A. That is the only objection.

Q. What else did you offer to put up with the surety company?

A. I haven't even offered to put that up.

Q. Well, you have been negotiating about bail, have you not?

A. I have.

1240 Q. Then you must have given the surety company a statement of what you were going to put up as collateral?

A. I must not have done any such thing.

Q. No?

A. No.

Q. Didn't you have to arrange with the surety company about collateral?

A. Yes.

Q. Well, what arrangement did you make?

A. I did not make any.

Q. Well, to whom did you talk?

A. That is the same question.

Q. Well then, we will get back to the trip. Now you left here on the night of February 27th to find Nicky Arnstein; is that right?

A. To do what?

Q. To find Nicky Arnstein? You went away to find Nicky Arnstein?

A. No. I went away.

Q. What?

A. I went away.

Q. Didn't you go away to find Arnstein?

A. Well, that is very—I don't think so.

Q. What did you do? You did not go on a pleasure trip?

A. No. I left New York City.

Q. Well, either on business or on pleasure. Now, which was it?

A. What?

Q. On business or on pleasure?

A. On business.

1241 Q. What was the nature of the business?

A. To be at a certain place at a certain time.

Q. To find Arnstein?

A. I would not say that.

Q. Well, with a view of finding Arnstein?

A. I would not even say that.

Q. No? Well, what place did you go to?

A. Pittsburgh.

Q. What hotel did you stop at? The William Penn?

A. Yes, that is right, William Penn.

Q. Under what name?

A. Rogers.

Q. What first name; John Rogers?

A. Yes sir.

Q. You signed under the name of John Rogers?

A. Yes sir.

Q. John Rogers is a friend of yours; a contractor in this City; is that right?

A. What is the use putting his name in the papers? No use making him famous either.

Q. Were these three detectives with you on that trip?

A. They were—you mean on that trip where?

Q. To Pittsburgh.

A. They went to Pittsburgh with me, yes.

Q. Stopped at the same hotel?

A. No.

Q. Where did they stop?

A. The Fort Pitt I think.

Q. Did you keep in communication with anyone after you got to Pittsburgh?

A. What do you mean by that?

1242 Q. Did you keep in communication with anyone in this City after you got to Pittsburgh?

A. Keep in communication?

Q. Yes; did you leave word where you could be reached?

A. When I left?

Q. Yes.

A. No.

Q. Well, after you got to Pittsburgh did you communicate with anyone in New York City?

A. Yes.

Q. With whom?

A. Fallon.

Q. Where? Where was he when you communicated with him?

A. I think at the Astor Hotel.

Q. Was that the 28th of February?

A. Oh no. That was in March some time.

Q. You got to Pittsburgh—

A. (Interrupting.) You mean during this trip did I communicate with anybody? Is that what you want?

Q. I want to go over the trip carefully, from City to City, and from person to person.

A. I did not communicate, I don't think, in Pittsburgh.

Q. You got to Pittsburgh the day after you left here; that is right, isn't it? February 28th you arrived in Pittsburgh?

A. Yes sir.

Q. Did anyone go with you besides these three detectives?

1243 A. No one. That was enough.

Q. Did they go at your expense?

A. They did not.

Q. Did you go at their expense?

A. I did not.

Q. You paid your own bills?

A. I did.

Q. Whom did you communicate with when you got to Pittsburgh? With whom did you communicate when you got to Pittsburgh?

A. No one.

Q. Now, you do not mean that.

A. I certainly do. I did not communicate with anyone when I got to Pittsburgh.

Q. What did you do when you got to Pittsburgh?

A. I went to the hotel and registered.

Q. You did not stay in your bathroom all day. What did you do; play solitaire? What did you do in Pittsburgh?

A. I went to Pittsburgh and went to the William Penn Hotel.

Q. And stayed in your room?

A. And stayed in my room.

Q. You did not talk to anyone?

A. Yes, I did.

Q. Well, whom did you talk with?

A. A Mr. Stern.

Q. What is his first name?

A. I don't know.

Q. Is he a lawyer? A. I don't know.

Q. How did you get in touch with him?

A. He got in touch with me.

Q. Well, how? How did that come about?

A. Because I was at that hotel.

1244 Q. How did he know you were there?

A. Well, that is—how did he know I was there?

Q. Yes.

A. That is the reason I went there: To be at that hotel at a certain hour.

Q. With whom did you arrange to meet Mr. Stern at that hotel in Pittsburgh?

A. I did not say I met Mr. Stern.

Q. You did not meet Mr. Stern?

A. I did not say it yet.

Q. Well, let us have it now.

A. Well, that is confidential.

Q. No; nothing is confidential.

A. It is too.

Q. Now, come right out and tell the whole story and get through with it.

A. Certainly I will tell the whole story.

Q. You have nothing to hide, have you?

A. No, absolutely. When I saw Arnstein in Cleveland, the next communication I was to receive from him was that I was to be in Pittsburgh at the William Penn Hotel at 11 o'clock on Saturday morning, register under the name of Rogers. And I went there and registered under the name of Rogers, and received a communication from Arnstein.

Q. How; by telephone?

A. No; by letter.

Q. Have you got the letter?

A. No, I have not.

Q. Where is it?

A. I have not got it. I destroyed it.

1245 Q. Well, where is it?

A. I destroyed it.

Q. What did it say?

A. I object to that.

Mr. Myers (addressing the Commissioner): A letter from the bankrupt, about his whereabouts.

The Witness: No; it is not about his whereabouts at all. I will tell you word for word just what the letter said.

Q. All right; go ahead.

A. The letter said: "I will not come in until my bail is fixed. Has bail been fixed? I am absolutely innocent of this charge. The papers are making a big cry, and Myers is trying to fix the crime on me. This is the biggest joke I ever heard of"——

Q. (Interrupting.) We will come to the joke later.

A. I am telling you what the letter said. Do you want what the letter said, or do you want——

Q. (Interrupting.) I beg your pardon; go ahead.

A. (Continuing.) This is the biggest joke I ever heard of. Has bail been fixed? I will not come in and lay in the Tombs until bail is fixed."

Q. And he said where he was?

A. I am giving you the contents of the letter.

Q. Where was it written from; Cleveland?

A. I don't know.

1243 Q. Where was it postmarked from?

A. It was not postmarked at all.

Q. Well, on the envelope?

A. Not on the envelope; a plain piece of paper; a plain envelope; no stamp; handed to me in my room.

Q. It did not come through the mail then?

A. It did not come through the mail.

Q. Do you know how it got to you?

A. Yes.

Q. Through whom?

A. Through that Mr. Stern.

Q. Is he a lawyer?

A. I don't know.

Q. You don't know his first name?

A. I don't know anything about him; I never saw him before.

Q. Nor since?

A. Or since.

Q. You never communicated with him since?

A. I have, or some man who said he was him.

Q. Now let us get this straight. Where can we locate this Mr. Stern?

A. I don't know.

Q. You would not know where to locate him?

A. No sir, I would not.

Q. You would not know where to communicate with him?

A. No sir.

Q. You don't know his first name?

A. I don't know his first name.

1247 Q. You don't know the nature of his business?

A. I think his first name is—he told me it was Henry.

Henry Stern.

Q. You do not know the nature of his business?

A. I do not.

Q. And you don't know what connection he has with Arnstein or with these bank thefts?

A. Nothing.

Q. Is that his correct name, do you know?

A. I don't know.

Q. Well, you would know whether he was Nick Cohen or not, wouldn't you?

A. What?

Q. You would know whether this man who said he was Henry Stern, was Nick Cohen or not, wouldn't you?

A. Who is Nick Cohen?

Q. You do not know Nick Cohen?

A. I may know several Nick Cohens; but I don't know who Nick Cohen is.

Q. Well, you know Gondorf?

A. I don't think I do.

Q. You never saw him in your office?

A. He never was in our office.

Q. Never?

A. Never.

Q. Fred Gondorf or Charles Gondorf?

A. I have heard of them, but I never saw them.

Q. You never saw those men in your law office?

A. Never.

1248 Q. Did you ever see Phil. Kastel in your law office?

A. Yes; he is our client.

Q. Well, this man Henry Stern was not Phil. Kastel?

A. He was not.

Q. Nor the Gondorfs?

A. I do not know the Gondorfs.

Q. Nor Nick Cohen?

A. I don't know Nick Cohen.

Q. Who else did you see in Pittsburgh on February 28th?

A. Nobody—the three detectives.

Q. Well, who else?

A. That is all.

Q. How long did you stay in Pittsburgh?

A. Saturday, Sunday, Monday and Tuesday I think. Saturday, Sunday, Monday and Tuesday.

Q. You left there on Sunday?

A. No; Saturday, Sunday, Monday and Tuesday. I stayed there all those days; I think I left on Wednesday morning.

Q. Please state to the Court all the persons with whom you communicated in any way while you were in Pittsburgh, from February 28th to March 4th.

A. I don't think I communicated with anybody. I tried to get in touch with Fallon.

Q. You were never able to get in touch with Mr. Fallon all the time you were in Pittsburgh?

A. I don't think so. I don't know whether I talked to him from Pittsburgh or the next city. I talked to Fallon. I tried to
1249 get in touch with him.

Q. Well, you called up various persons here in New York while you were in Pittsburgh, did you not?

A. Not various persons. I called up——

Q. Several?

A. Not several.

Q. Well, you called up the Hotel Braddock, did you not?

A. Yes sir.

Q. And with whom did you talk there?

A. Rogers.

Q. Anyone else?

A. No.

Q. You are sure about that now?

A. I am sure about that.

Q. What did you say to Rogers?

A. I asked him to go down and see—to get somebody to adjourn a case. That was on Wednesday morning. To be sure to take care of that case, because Fallon was trying the murder case.

Q. That is all?

A. That is all I said.

Q. To whom else did you talk from Pittsburgh?

A. I talked with that person you made famous, that Walter somebody.

Q. Walter Roth?

A. Walter Roth.

Q. Of the Opera Cafe, Seventh Avenue & 40th Street?

A. I talked with him.

1250 Q. What did you say to him?

A. I asked him to get in touch with Fallon and have Fallon call me up at the William Penn Hotel.

Q. And then Fallon did call you, did he not?

A. No, he did not.

Q. Sure about that?

A. That night; I am sure about that, because I stayed up all night——

Q. (Interrupting:) At any time while you were in Pittsburgh?

A. I don't think he did, no. Not at any time during the trip I don't think he called me.

Q. We just want to commence with the persons you communicated with in Pittsburgh.

A. He did not call me in Pittsburgh. I don't think he called me at any time during the trip.

Q. Now, let us see, Mr. McGee, if we have this record straight; the only person with whom you communicated while you were in Pittsburgh——

A. (Interrupting:) I talked with my wife I think from Pittsburgh; and I think I talked with—I think that is all.

Q. Did you talk with your wife about this case?

A. No. I told her—I had left rather unexpectedly, you know, and I was not able to communicate with her on the way out, and I waited until Tuesday or Wednesday and told her I thought

1251 I would be home the next day, or a couple of days.

Q. Did you tell her you were having any success?

A. Did I tell her?

Q. Yes.

A. No.

Q. Well, all of the time that you were in Pittsburgh you were in touch with Arnstein; is that right?

A. That is not right.

Q. Well, how much of the time that you were in Pittsburgh were you in touch with Arnstein?

A. Not one second.

Q. Well, you were in touch with him by that letter?

A. If that means in touch. I do not think it does.

Q. Well, if you wanted to communicate with Arnstein, you could have communicated with him?

A. I could not.

Q. Through Stern?

A. I could not.

Q. Stern brought you that letter?

A. He did.

Q. And you could have answered it through Stern, could you not?

A. I did answer it through Stern.

Q. What did you say?

A. I told him that in all probability that bail would be arranged, and I asked him to come in and meet me there and go in to New York and surrender; that he had—as much as I knew about the case, that he had nothing to fear; that I did not fear this case.

Q. You believed him to be absolutely innocent?

1252 A. Absolutely.

Q. And the whole thing a joke?

A. What do you mean, the whole thing a joke?

Q. You told him you thought the whole proceeding was a joke?

A. I did not tell him I thought that. Nothing is a joke when a man is indicted, and the publicity and notoriety he has been given.

Q. Did you hand that answer to Stern?

A. I handed the answer to Stern.

Q. And you don't know what Stern did with it?

A. No.

Q. You never asked Stern where Arnstein was?

A. I did not.

Q. Well, you wanted to know, didn't you?

A. I did not.

Q. Didn't you want to know where your client was?

A. I did not.

Q. Didn't you want to talk with your client?

A. I did not.

Q. Didn't you want to talk with him about bail?

A. I did not.

Q. Well, did you make it a point not to know?

A. Did I make it what?

Q. Did you make it a point not to know where to communicate with him?

1253 A. What kind of a question is that to ask a witness?

Q. Well, did you?

A. What?

Q. Did you make it a point not to know that?

A. How can I answer that? "Make it a point." What do you mean by "make it a point?"

Q. Well, you make it your business not to know where he was?

A. No, I did not. I did not ask, or anything else.

Q. You did not care where he was?

A. No.

Q. You thought you could always reach him in this indirect way?

A. No; I did not know if I would ever reach him or ever hear from him again.

Q. Now, have you told us the names of all the persons with whom you communicated while you were in Pittsburgh?

A. Yes sir.

Q. Why did you use the name Rogers?

A. Because that was the name under the hotel there—I was to go there and he would know that I was there.

Q. That was the name that Arnstein told you to use?

A. No. I told Arnstein I would use that name.

Q. You told Arnstein in Cleveland—

A. (Interrupting:) That I would use that name.

Q. (Continuing:) That you would use the name John Rogers when you got to Pittsburgh; is that right?

1254 A. That is right.

Q. Did you have any other correspondence with Arnstein while you were in Pittsburgh?

A. With Arnstein directly?

Q. Or indirectly?

A. Yes; indirectly.

Q. What other correspondence did you have with him?

A. I received a telephone call.

Q. From Arnstein?

A. Not from Arnstein.

Q. From whom?

A. From the man who said he was Stern.

Q. Where did he talk from?

A. I don't know.

Q. What is your belief?

A. I am not going to give you any belief, because I don't know.

Q. Well, was it from Pittsburgh or out of town?

A. I don't know.

Q. What did Stern say on that occasion?

A. I received the first telephone call on Sunday night or Monday morning.

Q. To what effect?

A. That Arnstein would not surrender unless bail was fixed.

Q. At what sum?

A. A reasonable sum.

Q. Didn't he state any amount?

A. No.

Q. What did you say?

A. I told them it was impossible to fix bail until he had been arraigned before the Court.

Q. And what happened after that?

1255 A. But I did not think bail would be over forty or \$50,000.

Q. (Question repeated.)

A. He said Arnstein would not surrender until after it was fixed, and as soon as it was fixed he would get in touch with me.

Q. Then you had further telephone talks with Stern?

A. Yes.

Q. When was the next one; do you recall that?

A. I think it was Tuesday night.

Q. With Stern?

A. Yes sir.

Q. What did he say?

A. He said the party would get in touch with me right away.

Q. The parties?

A. The party, Arnstein, would get in touch with me right away, and would come in to New York.

Q. And did he?

A. And for me to go to the Rochester Hotel, Rochester, New York, and there he would arrange for the surrender; that he was going to—that is about it; they would arrange the surrender. For me to go to the Rochester Hotel, Rochester, New York.

Q. Then you left Pittsburgh and went to Rochester?

A. Yes sir.

Q. And you registered at the Rochester Hotel under what name?

A. Henry Dalton.

Q. D-a-l-t-o-n?

A. Yes.

1256 Q. No one by the name of Dalton was with you?

A. No sir.

Q. Was anyone else with you besides these three detectives?

A. No sir.

Q. Did you tell these three detectives, while you were in Pittsburgh, what was going on?

A. I told them everything that I received or heard or anything else. They knew without my telling them, so I told them.

Q. How did they know?

A. I don't know how they knew. I only left the hotel twice, and each time I left the hotel I looked back, and one of them was after me; so—

Q. Well, did they know about these telephone talks with Stern?

A. Did they know about them? I think they were listening in.

Q. Now, have you told us all the telephone talks with Stern?

A. In Pittsburgh? I think so—no; I received another one.

Q. Please tell us about that?

A. I went up to the Henry Hotel in Pittsburgh, which is about two blocks from the William Penn Hotel, and I waited there for a call.

Q. From whom?

A. From the same party; because when they told me to go to Pittsburgh they told me they would call me at the Henry
1257 Hotel; that I should go up there and get a room. I could not get a room, so I waited around the lobby, and was accompanied by one of the detectives while I waited around the lobby; and I received another call. That is the call I received there I think.

Q. You were accompanied by Mr. Gegan?

A. I forget which one it was; either Brown, Gegan or Mayer; one of them were there.

Q. That would be one of the three; but you do not recall which one?

A. No sir.

Q. Will you please state about the telephone message at the Hotel Henry?

A. That was the one to go to Rochester.

Q. That was from Stern?

A. Yes sir.

Q. You don't know what business Stern is in?

A. I don't know anything about him; I never saw him before or since.

Q. Will you describe him please?

A. I could not describe him.

Q. Was he tall?

A. Ordinary size.

Q. Well, was he about five foot seven or eight?

A. About that I should say.

Q. Weighing about 150 pounds?

A. Around there.

Q. Dark?

A. No; just the same as you and I are.

1258 Q. Sandy?

A. Yes.

Q. Clean shaven; well dressed?

A. Yes.

Q. Just like yourself?

A. No; like you.

Q. Did you have any other communication from Arnstein, directly or indirectly, while you were in Pittsburgh?

A. No; I think that is all.

Q. No telegram?

A. No; nothing.

Q. No other letters?

A. No.

Q. Through the mail or otherwise?

A. No.

Q. Any other messages through Henry Stern?

A. No, I don't think so. How many have I given you; two or three?

Q. Three.

A. Three; that is what I received I think.

Q. You did not keep any diary while you were away on that trip?

A. No, I did not.

Q. You have told us now the names of all the persons with whom you have talked in New York, while you were in Pittsburgh?

A. Yes sir.

Q. And you have told us everything that transpired in Pittsburgh in reference to this case; is that right?

A. Yes sir.

Q. You never spoke to Arnstein directly?

A. Never.

Q. Or to Fannie Brice?

A. No.

Q. Well, you did talk with Fannie Brice just before you
1259 left on this trip?

A. Yes.

Q. Where?

A. The Hotel Astor.

Q. Will you please state what took place there; what you said and what she said?

A. I met her at the Hotel Astor.

Q. Did you have dinner with her?

A. No.

Q. What time was that?

A. I think it was around nine or ten o'clock.

Q. Just you and Fannie Brice?

A. Yes.

Q. No one else?

A. No one else. She had an instrument under her arm, and she said she had a dictagraph that had been put in her house. She wanted to know if I knew what a dictagraph was. I told her no, and she said "Well, I got it, anyway." And she had that instrument. And I said "Let's see what it is", and she opened up that rubber disc, how you call it, with a transmitter on, and so forth and so on. She showed it to me and asked me if it was a dictagraph. I said "I don't know; I never saw one before." She said "They have tried to plant this on me."

Q. Was that all you talked about?

A. She asked me about the interview with Dooling; and I told her that Mr. Dooling would not consent—I did not even ask him after it was \$100,000; I did not tell her I was going to ask him.

1260 Q. Did she inquire about her husband?

A. I did not know any more about her husband, except what I told you.

Q. But didn't she inquire about him?

A. No.

Q. She did not ask anything about her husband?

A. No. She asked about bail; that is all.

Q. Didn't she ask about her husband himself?

A. She knew I did not know anything about her husband, any more than I told you and her.

Q. And did she send any message to her husband through you?

A. She did not. She did not even know I was going.

Q. She did not know you were going on this trip?

A. No.

Q. Sure about that?

A. I am absolutely sure, because I did not tell her.

Q. And all you discussed was the dictagraph?

A. No; I discussed bail; about fixing bail.

Q. Did she say whether she could get bail?

A. No. She said that she had not arranged, or had not been able to fix any bail; had not been able to see any of the people.

Q. You say it was arranged by and between you and Arnstein and Henry Stern, that Arnstein should come from Cleveland, Ohio to Rochester, New York and surrender?

A. I did not say any such thing.

1261 Q. Well, wasn't it arranged that Arnstein should surrender in Rochester, New York?

A. No, it was not.

Q. Wasn't it arranged that Arnstein should go to Rochester for the purpose of surrendering?

A. No, it was not.

Q. Will you please tell us what was done?

A. I was told——

Q. By?

A. By that telephone communication.

Q. From Henry Stern?

A. Henry Stern—I had meanwhile tried to get Henry Stern in Cleveland, you see, at Cleveland—where he told me where I could call and communicate with him at the Central Hotel, but I was not able to get in touch with him. So they told me on this last telephone conversation, he said "There is no need of your staying in Pittsburgh. Go where he can surrender to you. Go to Rochester." So I went to Rochester, at the Rochester Hotel. And he said "What name will you be under?" And I said "Henry Dalton." And I went up to the Rochester Hotel and waited there in the Rochester Hotel. And that night when I got in Rochester, I saw how you examined Walter Roth. So when I received a telephone call at Rochester two o'clock that next morning, Thursday morning, saying that he would surrender, as I had advised him, and telling
1262 me to wait there until he surrendered, I said "There is no use waiting here. If I waited here the newspapers will have where we have gone, and everything else, and it cannot be done." So he said "Go to the Onondaga Hotel in Utica——"

Q. (Interrupting.) You mean in Syracuse?

A. He said "Go to the Onondaga Hotel in Utica"; I am telling you just that conversation. So I was in a dilemma. I went downstairs the next morning and asked if there was any Onondaga Hotel in Utica. They said there was not. They said the Onondaga Hotel is in Syracuse. So I took a chance and went to the Onondaga Hotel in Syracuse.

Q. Did you get in touch with any hotel in Utica?

A. Yes sir.

Q. What hotel?

A. I got in touch with all the hotels in Utica.

Q. By telephone?

A. By telephone; and I informed them if anyone called for Henry Dalton, he was in the Onondaga Hotel in Syracuse.

Q. Now, you left Pittsburgh Tuesday, March 4th and went direct to Rochester?

A. No; Wednesday.

Q. Wednesday, March 5th; and went direct to Rochester?

A. I went on a twelve hour ride during the day; from nine o'clock to nine o'clock.

1263 Q. And you took those three detectives with you; is that right?

A. Yes sir.

Q. Did they stop at the same hotel in Rochester with you?

A. No. One of them stopped at the same hotel that I did; and the other two stopped in another hotel.

Q. How long were you in Rochester?

A. One day.

Q. And then you went to the Onondaga Hotel in Syracuse?

A. Syracuse.

Q. That brings you down to March 7th?

A. That brings me down to Friday, doesn't it? Friday night.

Q. That would be the 5th?

A. Yes; that is the 5th.

Q. You said you left Pittsburgh on the——

A. (Interrupting.) On Wednesday.

Q. Wednesday; that was the 3rd.

A. And I stayed in Rochester two days instead of one day.

Q. Well, you left Pittsburgh on Wednesday, the 3rd?

A. If that is the date, that is right; and I stayed in Rochester the 3rd and 4th, and went to the Onondaga Hotel in Syracuse on the 5th.

Q. Now, will you please state the names of all the persons with whom you communicated while you were in Rochester, in any way at all.

A. I do not think I communicated with anybody while I was in Rochester.

1264 Q. Didn't you receive some telephone calls while you were in Rochester?

A. Yes sir.

Q. From Henry Stern?

A. From Henry Stern.

Q. And he was in Cleveland?

A. I think one of the calls came from Cleveland.

Q. Well, Henry Stern was not E. P. Strong?

A. You mean E. P. Strong, a lawyer in Cleveland? No.

Q. And he was not Ginsberg?

A. I don't think I know Ginsberg.

Q. Don't you know Cheeks Ginsberg?

A. I don't know any of them. I don't know Cheeks.

Q. And Roughy Ginsberg?

A. I don't know Roughy either.

Q. And Paddy Goldberg?

A. I don't know Paddy Goldberg.

Q. You don't know any of these men; never met them?

A. Not that I know of. They have been trying to describe to me Ginsberg; because I was asked to describe Ginsberg, and I have been trying to—

Q. Did you ever meet this man on the trip? (Showing witness "Wanted" poster with photographs on it.)

A. No. Who is he?

Q. That is Nick Cohen. Did you ever see him before?

A. No; I never saw him. I don't think I ever saw him.

1265 Q. You never represented him in any litigation?

A. No; not that I know of; I don't think so.

Q. Did Mr. Fallon ever represent Nick Cohen, either under the name Nick Cohen or under the name Harry Davis, or under the name "Big Nick," or under the name of Mack? You never heard of those names before?

A. No; I never heard of them. I heard of Nick Cohen, sure.

Q. You never met him?

A. Only since I started on this trip I heard of Nick Cohen in the papers.

Q. Did you meet Nick Cohen?

A. No, I did not.

Q. At any time in your life?

A. No.

Q. Or receive any communication from him, directly or indirectly?

A. No, none at all.

Q. Or did anyone in your office, *do* your knowledge?

A. Not that I know of.

Q. Then as I understand it, the only person with whom you communicated while you were in Rochester was Henry Stern?

A. And the different hotels in Utica.

Q. Not with Mr. Fallon?

A. I think I did; I am not sure—oh, I think I called my wife up from there too.

Q. Well, did you call Mr. Fallon from Rochester?

A. I would not say whether I did or not.

Q. Well, search your memory please and let us know.

1266 A. I am not sure whether I called Fallon from there or not.

Q. Well, did you call anyone besides your wife and Stern while you were in Rochester on the 3rd and 4th of March?

A. I don't think so.

Q. What is your best recollection?

A. That I did not call anybody.

Q. Did you receive any letters from anyone?

A. No; not a thing.

Q. Or did you send any?

A. No.

- Q. Through the mail or otherwise?
A. I might have sent a postal card.
Q. To whom?
A. To my wife.
Q. To anyone else?
A. No.
Q. Did you communicate with the Hotel Braddock while you were in Rochester?
A. I don't think so.
Q. Did you call up Archambault's Hotel?
A. No; Archambault's, that is a communication from Syracuse.
Q. And you spoke to a man named Thompson?
A. No, I did not; I spoke with Fallon.
Q. And he was at Archambault's?
A. Yes. He called me from there.
Q. He called you from there?
A. Yes; because I asked him where he was, and he told me at Archambault's.
- 1267 Q. He did not use the name Fallon, did he?
A. Certainly he used the name Fallon.
Q. Didn't he use the name Thompson?
A. He did not use that to me; he may have used it to anybody else. I know his voice.
Q. What did he say to you and what did you say to him?
A. I think that was in Syracuse, now.
Q. Yes; that is from the Onondaga Hotel at Syracuse.
A. Wasn't that the Onondaga?
Q. Yes.
A. That was not in Rochester.
Q. No.
A. I did call from Rochester the Braddock Hotel; I called Rogers and asked him to go to that trial and have Fallon call me at the Onondaga Hotel.
Q. Why did Mr. Fallon use the name Henry Thompson? Can you tell that to the Court?
A. I don't think he did. I don't see why he should use that name at all. It was a direct call. They did not even ask for me, but connected me right on.
Q. They asked for Henry Dalton, didn't they?
A. Yes.
Q. You were Henry Dalton?
A. Yes.
Q. And he was Henry Thompson?
A. I don't know whether he was Henry Thompson or not.
Q. Well, why was it that you used these names this way?
- 1268 A. That was to avoid this publicity. Everybody in the country knew me by that time.
Q. You and Mr. Fallon had nothing to hide?
A. Absolutely nothing; I did not want to hide; I wanted to get this man into this jurisdiction, and I did not want the people then to know who I was; that is the reason I used the different names.

Q. You knew the man was in Cleveland all the time, didn't you?

A. Well now, Mr. Myers, you don't think I know that.

Q. Didn't you know that your client, Nick Arnstein, was in Cleveland all this time?

A. I don't know where he was, or where he is, or anything about him, except what I have told you.

Q. Well, you believed he was in Cleveland?

A. I did not believe anything; I did not even try to believe anything.

Q. Well, you left him in Cleveland last February, didn't you?

A. Yes.

Q. And you knew that he was in touch with E. P. Strong?

A. Did I know he was in touch with E. P. Strong? I did not.

Q. You knew he was in touch with Cheeks Ginsberg?

1269 A. I did not.

Q. You knew those were his friends?

A. I did not.

Q. Well, you met Strong in Cleveland, didn't you?

A. I met Strong in Cleveland, yes.

Q. You knew he was advising Arnstein?

A. I did not; and I do not believe it now, that he was advising Arnstein.

Q. Don't you know that he got the room for Arnstein at the Winton Hotel in Cleveland?

A. I don't think so.

Q. Under the name of Arkin?

A. I don't think so. I don't know, but I don't believe it.

Q. Wasn't Arkin his friend?

A. Who?

Q. Wasn't Arkin Strong's friend?

A. I don't know.

Q. And it was Miss Arkin, wasn't it?

A. I don't know.

Q. A-r-k-i-n.

A. I don't know.

Q. Did you ever meet anyone by the name of Arkin at the Winton Hotel while you were there?

A. Never in my life. Never.

Q. You were up in Room 604?

A. I was not.

Q. You do not know who was in that room?

A. I do not.

Q. You do not know under what name Arnstein was registered there?

A. I did not even know he was registered there. This is the first information I have got that he was registered there.

1270 Q. But you met him in the lobby?

A. I met him in the lobby of the hotel.

Q. How long did you remain in Syracuse?

A. Until I came back.

Q. How many days were you there in Syracuse?

A. Friday, Saturday, Sunday, Monday; I think I came in on Tuesday.

Q. Please state to the Court all the persons with whom you communicated while you were in Syracuse?

A. The same people I communicated with before.

Q. Please re-state them. First, your wife?

A. Fallon.

Q. Your wife; and then Mr. Fallon?

A. And Stern.

Q. And then Mr. Stern; and Stern was in Cleveland?

A. No, I don't think so. They tried to trace——

Q. (Interrupting.) Then you communicated with Rogers?

A. I don't think I did from there; because Fallon called me up.

Q. Did you call up the Opera Café?

A. No.

Q. Did you call up the Astor Hotel?

A. No. I called the office.

Q. You called Mr. Fallon at Mamaroneck?

A. I tried to get him at Mamaroneck.

Q. Did you talk with him there?

A. No. I talked to him at the office.

Q. What did you say?

A. I asked him—I told him that I understood that Arndstein was to meet us at some time on Saturday or Sunday and surrender, and I asked him if bail was fixed.

Q. And he said no?

A. No; he told me that bail was fixed.

Q. At how much?

A. Well, no amount. I mean that proper security had been arranged.

Q. Didn't he say what the security was?

A. No. I did not ask him—yes, he did; he told me some people were going on the bail who did not want to be known.

Q. Didn't he say that Fannie Brice's mother was putting up her house?

A. No.

Q. And that someone else was putting up a house?

A. No sir.

Q. And that Fannie Brice was putting up very valuable pearls and other jewelry?

A. No. I knew all that before I left.

Q. You knew that was all going to be put up?

A. She could not put up the valuable pearls, because they were lost.

Q. What did she put up?

A. Diamonds. The pearls were lost; she lost the pearls; that was about a week——

Q. (Interrupting.) Not since the bankruptcy?

1272 A. Oh no; she lost them since all this trouble occurred, and really lost them too.

Q. Have you stated all the persons with whom you communicated in any way while you were in Syracuse?

A. No. I saw two or three fellows I knew in Syracuse.

Q. Will you give their names?

A. I saw Bill O'Brien.

Q. Who is he; a lawyer?

A. Yes sir.

Q. Who else?

A. I saw his father; Bill O'Brien's father.

Q. They had nothing to do with this case?

A. No. Bill O'Brien went to Fordham and played third base on the ball team. He is a lawyer; I went over to see him. His father is Chief of Detectives in Syracuse.

Q. And you discussed this case with this Chief of Detectives in Syracuse?

A. I did not.

Q. Not a word?

A. Not a word. I told Bill, because he knew as soon as I came in, about the search, and I told him not to tell his father.

Q. You said "Hush; don't talk about this case"; is that right?

A. Yes.

Q. "The case is tabooed," is that right?

A. That is right—oh, I spoke to Bill O'Brien about it, certainly. But I told him not to tell his father. I told him I was
1273 there—he knew I was there, without my telling him; but I told him not to tell his father, because we did not want the Police in Syracuse to think that he was to surrender there, and pick him up before he reached us.

Q. You wanted to bring him in here to New York yourself?

A. I didn't want him. Those three detectives wanted him.

Q. Have you give- us the names of all the persons you communicated with in Syracuse?

A. Then when I left Syracuse, the assistant manager of the Onondaga Hotel, he went to school with me but he did not know me for four days; and when I was leaving, there was nothing to be gained, I introduced myself to him; and he recognized me.

Q. What is his name, please?

A. Joe Grogan. He did not ever recognize me during the four days I was there, although he passed me five or six times. And then a fellow I taught at Fordham.

Q. What is his name?

A. Kiernan.

Q. What is his first name?

A. I don't know his first name; Kiernan asked me would I make a statement for the paper.

Q. Is he a lawyer?

A. No; he is a newspaper reporter.

Q. On what paper?

A. On one of the Syracuse papers.

Q. To whom else did you talk there?

A. That is all.

1274 Q. With whom else did you communicate by telephone?

A. That is all.

Q. With whom else did you communicate by writing?

A. Nobody.

Q. Who else communicated with you?

A. Nobody.

Q. Now, have you given us the names of all the persons with whom you communicated in any way, since you left New York?

A. Yes sir.

Q. Have you told us all the places that you were to since you left New York?

A. No; I was in Buffalo; I forgot to tell you that.

Q. When were you in Buffalo?

A. I was in Buffalo the day I left Rochester.

Q. You left Rochester on the 4th of March; is that right?

A. Whatever day it was.

Q. Thursday, the 4th of March?

A. I think I left Rochester—I struck Rochester Wednesday night and stayed until Friday, and left Friday morning on the eight o'clock train for Buffalo.

Q. You went to Buffalo before you went to Syracuse?

A. Yes.

Q. Was that per any arrangement with anyone?

A. No.

Q. Why did you go there?

1275 A. Well, I went there to see Niagara Falls.

Q. You did not go there to see Nicky?

A. No. I went to see Niagara Falls.

Q. You had not seen Niagara Falls since you had been a little boy?

A. I never saw the Falls frozen.

Q. You went up to see the Falls frozen; is that right?

A. Yes. And that is the only pleasure I had on that trip, too. I will tell you right now. The other times I remained in that hotel, in the room, too.

Q. Well, was Nicky anywhere near the frozen Falls?

A. I didn't see him, if he was.

Q. Or Nick Cohen?

A. I don't know Nick Cohen.

Q. Or any of these other confederates?

A. None that I know of.

Q. What?

A. I didn't talk to anybody in Buffalo at all.

Q. Who did you meet at Niagara Falls?

A. Nobody, only the guide that took me up around the Falls.

Q. Did you go over on the Canadian side?

A. Oh yes.

Q. Did you have Nicky with you?

A. Oh no.

Q. Did you see Nicky?

A. No.

Q. Did you see Strong?

A. No.

Q. Or Kastel?

A. No.

1276 Q. Or the Gondorfs?

A. I don't know the Gondorfs.

Q. Or the Ginsbergs?

A. I don't know the Ginsbergs.

Q. How?

A. I didn't see anybody in Canada, so I didn't see Ginsberg.

Q. You did not see anyone wanted by the police in New York?

A. No—I don't know whether they were wanted. I saw people.

Whether they were wanted or not I don't know.

Q. Whom did you see that you thought was wanted?

A. I didn't see anybody I thought was wanted, because I didn't talk to anybody.

Q. Who did you go out from the Falls with?

A. Who did I go out with? Nobody that had anything to do with the case.

Q. Well, whether they did or not, we will decide. Please tell us who they were.

A. I am giving you my word, Mr. Myers, that nobody had anything to do with the case. Isn't that sufficient?

Q. Did you stop at any hotel in Niagara Falls?

A. No.

Q. You stopped there for meals, did you not?

A. No; I went back to Buffalo to eat.

Q. What time did you get to Niagara Falls?

A. Twelve o'clock I think. And I left at two or three. Two hours; that is all.

Q. Where did you stop in Buffalo?

A. The Lafayette.

1277 Q. How long did you stay at the Lafayette? Over night?

A. No; just to eat.

Q. Whom did you meet there?

A. Nobody.

Q. Did you communicate with Stern while you were there?

A. No.

Q. Or with anyone else?

A. Nobody in this case at all.

Q. Then you deviated from your mapped out route in going to Buffalo?

A. No, I did not—you mean——

Q. That was not on the schedule?

A. No, that was not on the schedule.

Q. Niagara Falls was not on the schedule?

A. No.

Q. With whom did you communicate on the Canadian side?

A. No one.

Q. Did you go there just on a pleasure trip?

A. You know they drive you around, don't you know? They

drive you over—get a permit to drive you over there and drive you back. They don't even let you out of the car.

Q. You did not leave any securities over there?

A. No, none at all.

Q. You did not have any with you?

A. Not very much, I will tell you, by that time.

Q. And you did not communicate with anyone on the
1278 Canadian side at all?

A. No.

Q. Not even with Henry Stern?

A. No. I did not even get out of the automobile. They don't let you out.

Q. Now, when you left Rochester it was your purpose to go direct to the Onondaga Hotel at Syracuse; is that right?

A. That is right—no, that was not my purpose to go direct to the Onondaga at Syracuse. I was supposed to be there Friday night, which I got there.

Q. Well, what arrangement did you make to receive messages in the meantime?

A. I was not to receive any. That is the reason I went away.

Q. You were not to receive any until Friday night?

A. Friday night.

Q. At the Hotel Onondaga in Syracuse?

A. Well, the fellow said Utica, to be exact.

Q. Can you say why the message which you were to receive was delayed until Friday night?

A. Can I say what?

Q. Why the receipt of that message was delayed?

A. Only one day.

Q. You had left Rochester on——

A. (Interrupting.) Friday morning, and I got to the Onondaga
Friday night.

Q. No; you left Rochester on Wednesday, the 3rd, did you not?

A. No; I left Pittsburgh on Wednesday, the 3rd, and
1279 reached Rochester at ten o'clock that night; stayed that night in Rochester, and the next day, and left the next day after that for Buffalo, and came back the same night.

Q. Now please state to the Court all the persons with whom you communicated in Cleveland while you were there on February 23rd last.

A. February 23rd? I was not in Cleveland on this trip.

Q. No; on February 23rd.

A. Oh, the first trip?

Q. Yes.

A. I went to the Winton Hotel. Arnstein was supposed to meet me at the Winton Hotel. I went to the Winton Hotel and I could not get a room in the Winton Hotel; they had a school teachers' convention there, and they were flocking in. I went up to the desk and asked for a room, and they said "You cannot get a room here." So I called up Strong's office and asked for Strong, and they said he was not in his office; and I left the number, and asked him to call

me at the Winton Hotel; I would be in the dining room eating. And in walked Strong into the dining room. And we went out, and I said "I cannot get a room here. I want a room." And I asked him if I could get one. And he brought me over and introduced me to the manager of the hotel. And the manager left me, 1280 and I asked Strong what to do; and he didn't know. He got up and left; and I walked out of the hotel, and there I met Mr. Arnstein.

Q. What has Strong got to do with this case?

A. Absolutely nothing, as far as I know.

Q. Well, how did you know Strong?

A. I knew Strong through Kastel and through everybody else, I knew Strong—I did not know him; I never saw Strong before I don't think.

Q. How did you come to call him up?

A. The only person in Cleveland I could think of.

Q. Well, did Strong know that you were coming to Cleveland?

A. No, not that I know of.

Q. Wasn't some arrangement made with Strong that you should come to Cleveland?

A. No. I was to go to the Winton Hotel and register; that is all.

Q. Who made the arrangement that you should go to the Winton Hotel?

A. Fallon, on that long distance telephone call.

Q. Were you given any instructions from Mr. Fallon to get in touch with Mr. Strong upon reaching Cleveland?

A. Absolutely not. I did that of my own accord; the only person I knew in Cleveland.

Q. What other parts of Ohio did you visit either in 1280½ February or March?

A. None that I know of. I may have gone through other parts, don't you know.

Q. Did you get off at Columbus?

A. No, I did not.

Q. Were you ever in Cleveland except on that one occasion?

A. Never in my life.

Q. With whom else did you talk while you were in Cleveland outside of E. P. Strong and the bankrupt in this proceeding?

A. Nobody; except the manager, or assistant manager of the hotel, or whatever he was; and the waiter.

Q. Didn't you meet a man by the name of Ginsberg?

A. Never saw him.

Q. Weren't you introduced to anyone in Cleveland by Strong?

A. Absolutely; to the manager of the hotel, whatever he was.

Q. Or by Arnstein?

A. No; by nobody.

Q. Did you go to any home in Cleveland?

A. No.

Q. Or to any office?

A. No.

Q. Did you visit any broker?

A. No.

Q. Did you meet any broker?

A. No. I did not meet anybody but these people; if they are brokers, I don't know.

Q. What people?

A. Arnstein and Strong.

Q. Did you talk with Strong about this case?

A. I did not.

1281 Q. Not one word?

A. Not one word about this case.

Q. And you did not talk about any securities with Strong?

A. I don't talk about securities to anybody.

Q. Not even with Arnstein?

A. Absolutely. The only security I spoke about with Arnstein was about coming in.

Q. Didn't you tell Arnstein that it was alleged that he had received large quantities of stolen securities?

A. He knew that as well as I did.

Q. Didn't you ask him something about those securities?

A. He told me when I first met him, that he is absolutely innocent in this case. He had not received one nickel; never saw one bond; had not spoken to anybody who was connected with the case.

Q. Did he tell you what he was charged with?

A. No. We both knew he was charged with stealing \$5,000,000 of bonds.

Q. And you did not discuss that with him?

A. I took his word; and I believe it now.

Q. Who was in the lobby with you when you were talking with Arnstein?

A. Nobody.

Q. No one standing around?

A. Yes.

Q. I mean whom you knew?

A. No.

1282 Q. Or whom Arnstein knew?

A. Well, I don't know about that.

Q. Was Strong there at the time?

A. No.

Q. Strong was not in the hotel while you were talking with Arnstein?

A. I don't know whether he was in the hotel.

Q. Was he in the lobby?

A. He was not anywhere near, or did not know about it.

Q. Did you tell Strong that you were going to meet Arnstein?

A. I did not.

Q. Did you tell Arnstein that you were going to meet Strong?

A. No; I was not going to meet Strong.

Q. Did you tell Arnstein you had met Strong?

A. No, I did not.

Q. Were you in Strong's office?

A. No. I did not leave the Winton Hotel.

Q. Did you go to Toledo?

A. No.

Q. Did you communicate with anyone in Toledo?

A. No.

Q. Did you communicate with anyone at all while you were in Cleveland?

A. No, except Strong's office.

Q. Did you communicate with anybody in Detroit?

A. No.

1283 Q. Did you communicate with anyone at any time while you were in Cleveland, outside of E. P. Strong and Arnstein?

A. Nobody.

Q. By word of mouth, or letter, or telegram or telephone, or in any other way, directly or indirectly?

A. Except buying a few things, you know. I would ask for a pack of cigarettes from the girl.

Q. But I mean by these devious routes, of Henry Stern and others?

A. No, nobody.

Q. Were there any other Henry Sterns?

A. Nobody else there. I only saw those two persons, and I did not talk to anybody else in Cleveland; didn't see anybody else I knew.

Q. Did you meet Stern there?

A. No.

Q. Did anyone tell you who Stern was?

A. No.

Q. Do you know now who Henry Stern is?

A. Henry Stern.

Q. You don't know anything else about him?

A. Absolutely not.

Q. What his occupation is?

A. Nothing.

Q. Where -is home is, or what his connection is with Arnstein?

A. None that I know of.

Q. Do you know whether Henry Stern was his correct name, or simply a fictitious name, like the names that you used, Rogers and Dalton?

A. No sir, I do not know.

1284 Q. How did Stern identify himself?

A. How did he identify himself? Coming to my room, if it is the same fellow. I don't know whether he is the same.

Q. He said "I am Henry Stern?"

A. No; he gave me the what-do-you-call it; and when I gave him the letter back he said "I will call you at such and such a place at such and such a time."

Q. Did you recognize the voice at all?

A. No.

Q. You never heard his voice before?

A. Not that I know of.

Q. Or since?

A. Yes—you mean since I left Syracuse?

Q. Since you came back to New York.

A. No sir.

Q. You have been back here since March 9th; is that right?

A. Yes, that is right.

Q. What have you done about this case since then?

A. Trying to get bail.

Q. With whom have you been in touch on that point?

A. I am not going to answer that. That has got nothing to do with the Arnstein bankruptcy.

Mr. Myers: Mr. Commissioner, will you direct the witness to answer the question? He refuses to answer the question.

1285 The Witness: I object to the question as immaterial. I do not refuse to answer it. I object to it as immaterial.

(Question read to the Commissioner.)

The Commissioner: I will allow it.

The Witness: I ask for a ruling by the Court.

The Commissioner: Next question.

Q. Have you communicated directly or indirectly with Arnstein since you have come back to New York?

A. Absolutely not.

Q. Has Mr. Fallon?

A. Not to my knowledge.

Q. Has anyone else, to your knowledge?

A. Nobody else that I know of.

Q. Have you communicated with Fannie Brice since your return to New York?

A. Yes.

Q. When and where?

A. Every day, three or four times a day.

Q. Where?

A. Wherever I happen to be and meet her and everything else.

Q. Well, did you meet her to-day?

A. No, not to-day.

Q. Yesterday?

A. Yes.

Q. Where?

A. The Astor Hotel.

Q. What did you say to her about this case yesterday at the Astor Hotel?

1286 A. I said—this has nothing to do with the bankruptcy.

Q. Yes it has.

A. No, it has not; and you are only—this is only an attempt now to prevent this man from getting bail. What I said to her had nothing to do with the Arnstein case.

Q. It had to do with bail?

A. That is all; absolutely nothing to do with anything else.

Q. All these talks with Fannie Brice since your return have had to do with bail?

A. Absolutely nothing else.

Q. Well, did you discuss any of Fannie Brice's property with her?

A. Yes.

Q. Now, what property did you discuss? Because we claim it is the bankrupt's property.

A. You know differently.

Q. No, we do not; we believe that it is.

A. Well, then I discussed her jewels.

Q. What jewels?

A. Her jewels; that is all. I never asked her what they were, or anything else; I never even asked. She told me she had such and such an amount of jewelry.

Q. How much?

A. Between twenty and \$30,000. And she had a piece of property—her mother had, in which there was an equity of \$10,000; and that is the only security that she has, or we have been

1287 able to give, as far as I know, up to the present time.

Q. Did you discuss Mr. Strong's name with her?

A. Did I discuss Mr. Strong's name with her? You mean discuss Strong with her?

Q. Yes.

A. I met Strong with her.

Q. With her?

A. Yes.

Q. In New York?

A. Yes.

Q. This week?

A. Last night, at the Astor Hotel.

Q. Did you go to the theatre?

A. Did I go to the theatre?

Q. Did you go to the theatre?

A. You mean——

Q. Any theatre?

A. No.

Q. Well, did you go to the theatre last night with Mr. Strong?

A. No.

Q. You spent the evening with Mr. Strong at the Astor Hotel?

A. No; Mr. Strong left me—left us there.

Q. Well, you and Mr. Strong and Fannie Brice had a talk last night at the Hotel Astor?

A. Yes; we had a conversation; not a talk.

Q. Well, whichever you would call it; it had reference to this case?

A. It did not.

Q. It had nothing to do with the case?

A. I did not even know Strong was going to be there until

1288 I walked in the place.

Q. And you just talked about theatricals?

A. I was about an hour and a quarter late.

Q. I don't care whether you were late or not, Mr. McGee. What I am trying to find out is what you talked about.

A. Did not talk about anything in this case.

Q. Not one word?

A. Except as to the bail, what we had done.

Q. Did Mr. Strong offer to give bail?

A. Did he offer to give bail? No.

Q. Did he offer to arrange it, or help in arranging it?

A. No, he did not.

Q. There was some talk by Mr. Strong about bail?

A. No; we did not even ask him; no; nothing was said about him giving bail.

Q. What was he there for?

A. That is more than I know.

Q. You do not know why Mr. Strong was present at that meeting?

A. No. He was not supposed to be there.

Q. Just you and Fannie Brice were supposed to be there?

A. No; Fallon was there too.

Q. Then there were four in the party?

A. Yes.

Q. Well, anyone else?

1289 A. There were two other persons, that had nothing to do with the case.

Q. We want the names.

A. What is the use putting their names in, Mr. Myers? I will tell you, they had absolutely nothing to do with the case.

Q. We want their names; we cannot take that statement.

A. Well, you can take that statement; I am an attorney.

Q. Well, will you tell it to Mr. Gilchrist confidentially?

A. Yes.

Mr. Myers (addressing the Commissioner): Will you receive that confidentially, please, Mr. Gilchrist?

The Witness: Well, this is all immaterial, but I am willing to give him those names.

The Commissioner: Was this meeting by appointment or not?

The Witness: By appointment.

Q. Who arranged it?

A. I did.

Q. Whom did you notify to be there?

A. Miss Brice.

Q. And whom else?

A. Nobody else.

Q. Didn't you notify Strong to be there?

A. I did not even know Strong was in New York City until I walked into that hotel and saw him sitting down there.

Q. Did he telegraph you that he would be there?

A. Me?

Q. Didn't he telegraph your office that he would be here Monday night of this week?

1290 A. No, he did not. He telegraphed Mr. Dooling I think. He told me something about meeting you and Mr. Dooling—oh, I made a mistake. That was the Claridge I saw them last night.

Q. Not the Astor?

A. Not the Astor. He told me about you and him; if you want the conversation, I am going to tell you.

Q. Tell me the whole thing.

A. He told me about you and Mr. Dooling being up there at the Astor, having dinner. He said he liked both of you very much; he thought you were both good fellows. He said he had a good time with you, and he said that Ginsberg had—Mr. Dooling wanted Ginsberg to come in and have a conversation—have a talk with him. He said he got into New York to-day and telephoned Mr. Dooling he would be at Mr. Dooling's office this morning at eleven o'clock. He also informed Mr. Dooling that Ginsberg said he could not come on from Cleveland now; that Ginsberg could not come on now; but if Mr. Dooling wanted to come to Cleveland, Ginsberg would pay Mr. Dooling's expenses, and there himself talk to him.

Q. That he had nothing to fear?

A. Who?

Q. Ginsberg.

A. I am not interested in Ginsberg.

Q. You do not represent Ginsberg yet?

1291 A. That is good, "yet."

Q. Did Strong say why Ginsberg would not come to New York?

A. Did he say why he would not come? I did not ask him.

Q. Did he tell you?

A. I don't know. I imagine he was too busy.

Q. He had nothing to fear?

A. Nothing to fear? I don't know whether he had or not. Don't bring me in that case; I don't know anything about that.

Q. Well, you expect to be retained there too, don't you?

A. Well, I wish we were.

Q. In the Ginsberg end of it?

A. I wish we were; that is all I can say.

Q. And the Binkowitz end of it?

A. I don't know anything about that.

Q. You don't know anything about the Binkowitz end of it?

A. No.

Mr. Myers: I think we had better have on the record who else was there, Mr. Commissioner.

The Witness: I am giving you my word, the people absolutely had nothing to do with this case, and don't know anything about it. What is the use having their names published?

The Commissioner: Why press it?

1292 Q. Were they women?

A. One woman and one man.

Q. Well, we will pass that for a moment. Will you please state all that was said at that meeting last night, about this case?

A. That is about all.

Q. You have not told us anything yet.

A. Well, there was not anything said.

Q. Oh yes; you know you talked about this case.

A. I told Miss Brice——

Q. (Interrupting.) Were you there for dinner?

A. I was a little late for dinner.

Q. There was a dinner there, and you came in after the dinner?

A. No, no.

Q. You came in a little late?

A. This was six o'clock you see.

Q. You came in about seven?

A. I came in a quarter after seven. Miss Brice had to be at the show I think a quarter to eight.

Q. So that Fannie Brice and Mr. Fallon were there on time?

A. I don't know whether they were or not.

Q. And Mr. Strong?

A. They were all there when I came in.

Q. All right. Please state what was said about this case by anyone last night.

1293 A. That is all that was said. Wanted to know how we did with the surety company. I said we had not done anything; they would not let us.

Q. Didn't Miss Brice ask anything about her husband?

A. She knows I have not seen her husband or heard from him, or anything like that; I told her that.

Q. Was there anything said at all about this case by Strong?

A. Nothing, except that this case, through your telegrams that you exposed in the papers, from him, had cost him a business deal, or something like that.

Q. Did Mr. Strong say whether he knew where Arnstein was?

A. He said he did not know where he was. Because he told me he had been down and had talked with Mr. Dooling and you, and told you everything he knew. And I asked him what the conversation was, and he told me the entire conversation he had with you.

Q. Did Fannie Brice say whether she knew where her husband was?

A. No.

Q. Did Strong say whether he had heard from Arnstein?

A. He has not.

Q. Did Fannie Brice say whether she had?

A. Fannie Brice has not heard from him at all.

Q. Has Mr. Fallon?

A. No.

Q. You don't know where Arnstein is?

A. No.

1294 Q. And Fallon does not know?

A. No.

Q. And Fannie Brice does not know?

A. No.

Q. And Strong does not know?

A. Well, I don't know whether they know or not——

Q. But they did not tell you?

A. They did not tell me.

Q. And you did not ask them?

A. They said they did not know. Mr. Dooling knows; he has

seen Mr. Strong since I saw him. He was supposed to be at his office at eleven o'clock this morning. He is in Court. (Referring to Mr. Dooling.)

Q. You had another meeting with Fannie Brice the day before yesterday, did you not?

A. What day was that?

Q. That was on Monday, the 15th.

A. Yes; I went to her house.

Q. 1 West 83rd Street?

A. Yes.

Q. Who else was there?

A. Fallon.

Q. And who else?

A. And the party that lives there; I don't know.

Q. A man or a woman?

A. A woman.

Q. Don't you know her name?

A. I know the name. It is a girl that lives with her up there in the apartment. You know the name too.

Q. No, I do not.

— I think it is Weston.

Q. W-e-s-t-o-n?

A. Yes.

1295 Q. Is she on the stage?

A. Yes.

Q. In the Follies?

A. The Follies left New York some time ago, didn't they?

Q. In the show with Fannie Brice?

A. Yes.

Q. Do you know her first name?

A. May I think.

Q. And did she sit in on this conference?

A. There was no conference then.

Q. What was it?

A. We had an appointment with a certain bonding company, and we went over to see them, and afterwards we told her just what they said.

Q. Tell us what you told her.

A. I told her the bonding company would not write the bond unless they got full security.

Q. How much security?

A. Whatever the bond was.

Q. Was Strong there?

A. No.

Q. Just you, Fallon, Fannie Brice, and Miss Weston.

A. That is all.

Q. Is that so?

A. Yes.

Q. Was Mr. Rogers there?

A. Oh my God, no!

Q. Was O'Leary there?

A. No.

Q. Anyone from the surety company?

A. No.

Q. Did you meet Fannie Brice at any other time and place?

A. I have met her every day since I have been back, except
1296 Sunday; either met her or talked to her. Some days maybe
I did not meet her, I talked to her.

Q. What efforts have you made to bring Arnstein back to New
York City?

A. Every effort I could.

Q. Well, state what they were.

A. Tried to persuade him, while I was in Cleveland.

Q. How?

A. Tried to persuade him while I was in Cleveland, to come in.
Tried to persuade on each one of those telephone conversations.

Q. With Stern?

A. Yes.

Q. Now, who paid all these expenses while you were traveling
from New York to Pittsburgh, and then to Rochester and then to
Buffalo, Niagara Falls, and Syracuse?

A. I already told you that before.

Q. No.

A. Yes, I did; right at the start of the examination. Mr. Doelling
was not here then. I did.

Q. How much was that; several hundred dollars?

A. You mean the two trips?

Q. How?

A. About five or \$600.

Q. Did you get that money from Arnstein?

A. I never got a cent from Arnstein.

Q. Did Mr. Fallon ever get any money from Arnstein?

A. Not that I know of.

1297 Q. Where did this money come from?

A. It came from me.

Q. Then you were advancing it for the account of Arnstein?

A. Am I advancing it for the account of Arnstein? I am ad-
vancing this money on the case, if that is what you mean.

Q. Well, how much have you advanced on this case so far?

A. I have not advanced anything. I spent it myself.

Q. How much have you spent; \$1,000?

A. Not yet.

Q. About how much; 700?

A. Six or \$700.

Q. You have no arrangement about getting it back?

A. Well, we expect to be paid if we try this case. We expect to
be paid on one condition: If we can get this man in New York and
try the case.

Q. In the meantime you are going on spending all this money
for his account?

A. I would not consider it "and all this money."

Q. Well, several hundred dollars.

A. I have not spent anything since.

Q. Have you any arrangement with anyone for reimbursement?

A. Not at all; unless he comes back and is tried. That is the reason I am anxious to get him back and try the case.

Q. Have you any such arrangement with Fannie Brice?

1298 A. Never, no sir.

Q. Or with Strong?

A. Absolutely not.

Q. Or with anyone else?

A. With nobody.

Q. Then your office is standing that money out of your pocket?

A. I am standing it myself.

Q. Out of your own pocket?

A. Yes sir.

Q. Without any arrangement about getting it back?

A. This is not the first case we have done that in, either.

The Commissioner: No; answer the question.

Q. When you met Arnstein, your client, the first time on February 23rd last, please state exactly what you said to him with a view of persuading him to come back, and what he said to you as to why he did not want to come back.

A. I am not going to tell you that; I refuse to.

Q. You have told us everything now——

A. (Interrupting.) Well, I will tell that to you: I told him to come back; that if he would get on that train with me, that we could walk right into Part I, and even though they had said that, I think they wanted \$225,000 bail, that I did not believe that any Judge would ever insist on over \$25,000, or at the most, \$50,000 bail; and I said "Come right in," and he said "No; I laid in the

Tombs once before for five or six months trying to get bail." 1299 He said "I have got rheumatism and I don't intend to lay there now." I said "Listen: If you come back there, you will only be in two or three days, or five days maybe; and during that time we will perhaps be able to get bail for you." He said "No, I am not going to come back until that bail is fixed." I said "There is no chance of fixing that bail, unless Mr. Dooling will consent to it; because," I said, "the Judge won't fix bail unless you are actually present in Court."

Q. Did you tell him what Judge was in Part I?

A. I did not even know.

Q. Did he know?

A. No.

Q. Was the name discussed?

A. No.

Q. Go right ahead.

A. That is about practically all that was said.

Q. Is that the sum and substance of it, to the best of your recollection?

A. Yes, to the best of my recollection.

Q. Who told you that bail was going to be \$225,000?

A. The newspapers, in a statement by Mr. Murphy, \$250,000.

Q. Did you see that in the paper?

A. Yes.

Q. \$250,000?

A. Yes sir.

Q. Do you — Ranny Newman, the lawyer?

A. Who?

Q. Ranny Newman, a lawyer.

The Commissioner: Randolph Newman.

1300 The Witness: Yes.

Q. You know him well?

A. Well, I don't know what you mean by well. I know Randolph Newman.

Q. You have known him for a long period of time?

A. I would not say that.

Q. When did you see him last?

A. Randolph Newman? I think I saw him once since I have been back; that is all.

Q. At his office?

A. No; I think he came to our office.

Q. What was discussed, about this case.

A. Nothing.

Q. He did not call to see you about this case?

A. Absolutely not.

Q. What has he got to do with this case?

A. As far as I know, absolutely nothing.

Q. Well, didn't he receive large sums of money from Arnstein?

A. Well if he did, I did not know it.

Q. And Cohen?

A. I don't know that; ask him. I don't know what he has received.

Q. And Sullivan and Bowls?

A. I don't know anything about his business; what is the use asking me those questions?

Q. Did not Newman get you into the Sullivan case?

A. No.

1301 Q. Wasn't it through Newman that your firm was retained to represent David Sullivan?

A. No.

Q. Last November?

A. No; not that I know of.

Q. And didn't Newman first get Judge Dyer in, who was then practicing at the Bar?

A. I don't know.

Q. And after that, your firm?

A. I don't know whether he got Judge Dyer in or not.

Q. Well, was it through Newman that your firm was retained—

A. (Interrupting.) I don't think so.

Q. Wait a moment. Was it through Newman that your firm was retained to represent Arnstein?

A. Oh, absolutely not.

Q. Do you know the Sugarman brothers, lawyers?

A. Yes sir.

Q. Have they any connection with this case?

A. Absolutely none, as far as I know.

Q. Have you seen them since you have been back?

A. Yes.

Q. And talked about this case?

A. I saw one of them.

Q. Which one; J. Charles?

A. S. Charles, yes.

Q. Did you discuss this case with him?

A. Absolutely not. I discussed my trip, you know.

Q. Did you discuss this case with Sugarman at any time?

A. Never.

1302 Q. Did you discuss this case with Newman at any time?

A. Never.

Q. And you only met this one Sugarman?

A. That is all.

Q. You are sure you have no letters left from Stern?

A. No.

Q. Have you destroyed them all?

A. I only got one.

Q. Did you have any reason for destroying it? Was there any purpose in it?

A. No purpose, except that I might lose it, or something like that.

Q. I beg pardon?

A. I might have lost it, or something like that.

Q. Didn't you think that the handwriting would have assisted the County Authorities here in locating Arnstein?

A. How could that be done?

Q. I do not know; I am not the District Attorney.

A. How could they? I don't think so. Maybe they think so. I do not.

Q. Did you ever see Arnstein's writin-?

A. No.

Q. Before that time?

A. No, I don't think so.

Q. Or since?

A. No.

Q. Well, you did represent Arnstein before this case, didn't you?

A. Never.

Q. But you represented Phil. Kastel before this case?

1303 A. Yes.

Q. And Kastel and Arnstein and Cohen are together, are they not, in matters?

A. Not that I ever knew of.

Q. Didn't Kastel communicate with you while you were in Cleveland?

A. Absolutely not.

Q. Or with Strong?

A. Well, I don't know anything about what Strong did. I can only tell you what I did.

Q. Kastel did not know you were coming to Cleveland?

A. No; nobody knew I was going to Cleveland.

Q. Have you seen Kastel since your return to New York?

A. No sir.

Q. Do you know where Kastel is now?

A. No.

Q. Do you know the different names under which Arnold has gone at any time?

A. Only what I have seen in the newspapers.

Q. Well, outside of that.

A. No.

Q. Do you know Louis Bleet?

A. Yes.

Q. How long have you known him?

A. Well, we represented him one day.

Q. When?

A. Up before the Grand Jury.

Q. When?

A. Oh, it must be six or seven months ago; I don't know.

Q. In connection with what matter?

A. I don't know; the Grand Jury did not confide in me;
1304 they left me outside and asked him in.

Q. Was he indicted?

A. No.

Q. Was he a witness? Was it in connection with the financial thefts; the Wall Street thefts?

A. I think it was something about—Mr. Dooling—I think it was something about—

Q. (Interrupting.) Something about these Wall Street thefts?

A. Well, I think it was.

Q. And the murder of the messenger, Binkowitz?

A. I think it was—

Q. Did you ever see Binkowitz?

A. No.

Q. Alive or dead?

A. No.

Q. Did Mr. Fallon, to your knowledge?

A. Not that I know of. He never told me about it. I don't think he did.

Q. Did you ever have anything to do with Binkowitz?

A. No.

Q. Or with the Gluck brothers?

A. No.

Q. Or with the Bunero brothers?

A. No.

Q. Or with Bill Furey?

A. No.

Q. F. Furey, F-u-r-e-y?

A. No.

Q. Do you know Ed. Furey who is in the Tom-s now?

A. Have I ever seen him?

1305 Q. Yes.

A. I don't know whether I have or not. Some people tell me I know him, and others—I cannot place him.

Q. Did you ever meet him at the Hotel Claridge?

A. No.

Q. Or at any other place?

A. Not that I know of.

Q. Do you know Phil. Dalton?

A. He has got the same name I did?

Q. Yes.

A. No; I don't know him.

Q. You took the name of a man we are looking for. You do not know him?

A. No.

Q. You never represented him?

A. No.

Q. How did you come to pick out the name of Dalton?

A. Well, I always heard that story about Jack Dalton; so I took that.

Q. You did not use the name Jesse James anywheres?

A. No.

Q. Do you know Maurice Dekker, D-e-k-k-e-r?

A. Do I know him? I think I know Maurice Dekker.

Q. Did you- firm ever represent him?

A. No. A firm I was connected with sued him once.

Q. What firm?

A. Hitchings & Burdick. When I was in their office I think they sued Maurice Dekker.

1306 Q. Do you know George S. Derr, D-e-r-r?

A. No sir.

Q. Charles Druckker?

A. No; I don't think I know Charlie Druckker.

Q. Do you know W. W. Easterday?

A. Yes.

Q. Have you seen him lately?

A. I saw him in Washington.

Q. How recently?

A. Oh, at the time I was down in Washington.

Q. How recently?

A. That was right before Christmas. I came back Christmas Eve; that is how I know; Christmas Eve.

Q. Are you his attorney?

A. Who?

Q. Easterday's attorney?

A. Well, if they ever get him to New York I think we will be his attorneys.

Q. You have arranged that, have you?

A. Well, I spoke to him.

Q. And you are the attorneys for David Sullivan?

A. Yes sir.

Q. And Norman S. Bowls?

A. Well, Norman S. Bowls has not been arrested in New York yet.

Q. But when he is arrested, you will represent him?

A. We hope to.

Q. That has been arranged for?

A. Not yet. That is what we——

1307 Q. (Interrupting.) Did Arnstein pay any fees to you on the account of Sullivan and Bowls?

A. Never.

Q. Directly or indirectly?

A. No.

Q. Did you ever get any Liberty bonds from Arnstein?

A. No.

Q. For the account of the Sullivan case?

A. No. We never got a cent from the Sullivan case as yet.

Q. You say you never got any money in the Sullivan case; is that right?

A. Has that got anything to do with Arnstein?

Q. Absolutely.

A. Nothing; not a cent.

Q. You have not been paid for your services in the Sullivan case?

A. Not one cent.

Q. From anyone?

A. No; from no one.

Q. In cash or by Liberty bonds?

A. We would not take Liberty Bonds.

Q. You would not take Liberty Bonds? You cannot spend Liberty Bonds?

A. (No answer.)

Q. What would be your reason for refusing Liberty Bonds?

The Commissioner: No; don't care anything about that.

Q. Because you thought perhaps they were stolen?

1308 A. Because a surety company would not take them.

Q. Because you thought they were stolen?

A. No.

Q. Did you ever hear that \$50,000 worth of Liberty Bonds had been stolen, in the Binkowitz case?

A. Did I ever hear of it? \$50,000? I thought it was more than that. I did read the papers.

Q. No; outside of the papers you did not hear of it?

A. No.

Q. Do you know David Eschner?

A. David Eschner?

Q. E-s-c-h-n-e-r.

A. No.

Q. Do you know Forrest A. Graves, G-r-a-v-e-s?

A. No.

Q. Did you ever meet him anywhere?

A. Who?

Q. Forrest A. Graves.

A. No, not that I know of.

Q. Did you ever hear of him?

A. No; this is the first time I ever heard of him.

Q. Mr. Strong never mentioned his name?

A. What kind of a question is that? "Strong never mentioned his name?"

Q. The question is a plain one: Did he ever mention Graves to you?

A. No.

Q. Did you ever know or hear of George G. Hynson, H-y-n-s-o-n?

A. No sir.

Q. Or Charles B. Hynson?

A. No.

1300 Q. Or Danny Jacobs?

A. No.

Q. Or Frank McGee?

A. Frank McGee?

Q. Yes.

A. I have heard about Frank McGee.

Q. Where is he?

A. I don't know. Isn't that the broker downtown, the man that was in trouble?

Q. Yes.

A. I have heard about him.

Q. When did you see him last?

A. I never saw him yet.

Q. Do you know where the Gondorfs are now?

A. I don't even know them, to know where they are.

Q. They were in your office recently, weren't they?

A. Who?

Q. The Gondorfs.

A. Not that I know of.

Q. Didn't the Gondorfs meet Sullivan in your office recently?

A. No.

Q. Sure about that?

A. Why, I am absolutely sure about that.

Q. You say that neither one of the two Gondorfs, whose names I gave you before, have ever been to your office?

A. Never that I know of.

Q. Do you know Irving Mulrooney?

A. I know Pierce Mulrooney.

Q. You call him "Mul," is that right?

A. Yes sir.

1310 Q. What has he to do with this case?

A. Absolutely nothing. He went to Fordham with me in

1002.

Q. Well, you have talked with him over the Long Distance telephone while you were away, did you not?

A. Yes.

Q. From where?

A. From Pittsburgh.

Q. And what did you say to him?

A. He is trying to arrange, through somebody in Washington, in a different deal altogether; an Income Tax case. And he started to speak to me about that Income Tax case; and I said to him "Wait till I get back."

Q. And that had to be done over the Long Distance telephone?

A. That is what I thought when he called me up.

Q. You called him first, did you not?

A. No.

Q. Sure about that?

A. Absolutely sure about that.

Q. How did he know that you were in Pittsburgh?

A. He happened to be in that café when this fellow called me back; and he got on the phone. And I said "Wait till I come back; I expect to be back soon."

Q. You never called him at all?

A. No.

Q. Not even from Rochester?

A. No.

Q. Or from Syracuse?

A. No.

1311 Q. Or from Niagara Falls?

A. No.

Q. Or Buffalo?

A. No.

Q. Or Cleveland?

A. No.

Q. That is the only time you spoke to Mulrooney over the Long Distance phone?

A. Yes. He has got absolutely nothing to do with this case; does not know anybody connected with it, or anybody else.

Q. Do you know J. C. Rabiner, R-a-b-i-n-e-r?

A. No.

Q. Do you know William Scherer?

A. No.

Q. Elmer E. Steele?

A. Elmer Steele? Is he a lawyer?

Q. I don't know; a friend of Arnstein's.

A. I don't know him then.

Q. Do you know Charles Enright?

A. He is not the Police Commissioner, is he?

Q. You know the Police Commissioner pretty well, don't you?

A. No; I never saw him.

Q. Do you know Charles Enright?

A. Is he the Police Commissioner?

Q. I don't know; I am asking you.

A. I don't know him. I know of him if he is the Police Commissioner.

Q. You know the Police Commissioner is Richard E. Enright, don't you?

A. I thought it was Charles Enright.

Q. Well, do you know Charles Enright?

A. No sir.

1312 Q. Did you ever hear that name before?

A. No.

Q. Did you ever know of any of the persons whose names I have asked you about, using that name?

A. No.

Q. Did you ever know that Sullivan went under that name?

A. No.

Q. Did you ever know that Sullivan went under the name of Elmer E. Steele?

A. No.

Q. Did you ever know that Sullivan went under the name of George Wall?

A. No.

Q. Did you ever hear the name George Wall before?

A. No.

Q. Do you know I. A. Zigman, Z-i-g-m-a-n?

A. No.

Q. Or Herbert Weil?

A. No.

Q. Did you ever hear of them?

A. No.

Q. Do you know William H. Washer?

A. William H. Washer?

Q. Washer's Café, 86th Street & Broadway.

A. Yes.

Q. Do you know him well?

A. No; I only know him from standing here when I was being examined the last time.

Q. Is that the only time you ever saw him?

A. No. I saw him before. I saw him up in the café.

Q. Did you ever talk with him about business?

A. No.

Q. At any time?

A. No.

1313 Q. Did you ever discuss this case with him at any time?

A. No.

Q. Did you ever know Nick Cohen or Kastel ever using any of these names that I have read off to you?

A. No sir.

Q. Did you ever know anyone going under any of these names?

A. No.

Q. Do you know anyone by the name of Phil. Kent?

A. Phil. who?

Q. Kent, K-e-n-t; or P. Kent; Phil or P. Kent.

A. No; I don't know anybody by that name; but I know somebody who used the name.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

Hearing adjourned until Saturday, March 20th, 1920, at 9:30 a. m., at which time the Commissioner directed Mr. McGee to appear for further examination.

1314 In the Matter of NICHOLAS ARNSTEIN.

New York, March 20th, 1920—9.30 a. m.

Present:

The Commissioner.

Mr. Myers.

At 10 a. m., the Commissioner called Eugene F. McGee, who, failing to respond, his default is noted.

1315 In the Matter of NICHOLAS ARNSTEIN.

Hearing resumed.

New York, March 23rd, 1920.

Present:

The Commissioner.

Mr. Myers.

EUGENE F. MCGEE recalled.

Examined by Mr. Myers:

Q. Mr. McGee, there are certain discrepancies in your testimony which I would like to have you clear up.

A. I will be very glad to clear them up, Mr. Myers; anything I can clear up I will be very glad to.

Q. As I recall it, you testified at the beginning of this proceeding that at one time you saw the bankrupt, Nicholas Arnstein, in New York City; is that right?

A. Yes sir, I did.

Q. Will you please state when that was that you saw him?

A. It was about six months ago.

Q. Where?

A. I met him at Reisenweber's. That is before he ever thought of being a bankrupt.

Q. Before he had ever been charged with the commission of any crime?

A. Absolutely. That is the first time I ever met him.

Q. You met him socially?

A. Absolutely.

Q. With his wife?

A. No. I met him alone.

Q. Was anyone else in the party besides you and he?

A. Yes sir.

Q. Will you please state who they were?

A. They had nothing to do with this now.

Q. Well, were they any of the names I have mentioned to you at any time in this proceeding?

A. No.

Q. Mr. Fallon stated to Judge A. N. Hand on February 28th last that he would send you out to bring the bankrupt back in this case. You know about that?

A. I don't know what he stated at all. The only thing what I know—

Q. Well now, I am telling you that the record shows, Mr. 1317 McGee, that Mr. Fallon stated to Judge A. N. Hand that you knew where the bankrupt could be found.

A. Mr. Fallon is absolutely wrong in that, Mr. Myers; and you know it too. Whatever he stated to Judge Hand, I know nothing of, because I was away from here at that time, Mr. Myers, as you know.

Q. Didn't Mr. Fallon tell you at any time what he had testified to in this proceeding?

A. Absolutely not. I don't know what he has testified to, any more than what you testified to.

Q. But you left New York on February 27th last to go to Pittsburgh?

A. The 27th? Is that the day I left; Friday?

Q. Yes.

A. That is that day.

Q. Didn't you know then where Mr. Arnstein was?

A. I did not.

Q. Or how you could get in touch with him?

A. I knew how I could get in touch with him, certainly.

Q. But when you were before Judge A. N. Hand didn't you tell Judge A. N. Hand that you did not know how you could get in touch with him?

A. No, I did not. The question was asked me, and Judge Hand ruled that I should not testify to that question.

Q. Didn't Judge Hand ask you whether you knew where the bankrupt was?

1318 A. He did not—well, I do not even know now.

Q. Not even indirectly?

A. Indirectly or directly, I do not know now.

Q. Well, didn't Judge Hand understand from what you said to him, that you would be in a position to find the bankrupt?

A. No. Judge Hand refused—when the question was put to Judge Hand, Judge Hand directed me not to answer, as it was a question between attorney and client, where I could meet the bankrupt. If you will read the record, Mr. Myers, as you have undoubtedly done, you will see that that is the same question.

Q. We will read it over again.

A. I told you afterwards—I want to say, even though Judge Hand

sustained the objection, I afterwards told Mr. Saul Myers just where and how I could meet this bankrupt.

Q. What did you say? Let us have it on the record. What did you tell me?

A. That is all on the record before.

Q. You say after Judge Hand sustained the objection you told me?

A. You know he did too, don't you?

Q. Yes. Now go on; tell me what you said to me afterwards.

A. I didn't say anything to you; but since, when you examined me since.

Q. Oh, you mean since?

A. Yes.

1319 Q. Now let us go back a bit: You left New York the day after Washington's Birthday, for Cleveland; didn't you?

A. No, I did not; I left on Washington's Birthday—no; I left before. I left on the 21st I think.

Q. You left the day before Washington's Birthday; the 21st of February 1920?

A. I think so.

Q. That was in pursuance of a talk which you had with Mr. Fallon?

A. What?

Q. That was in pursuance of a talk which you had with Mr. Fallon?

A. I would not say that, Mr. Myers.

Q. Well, how would you put it?

A. Well, I said it was in pursuance of a conversation that I had here.

Q. You remember going to Cleveland on or about Washington's Birthday—

A. (Interrupting.) Now listen; wait a minute. I am going to raise a question right now.

Q. I am trying to clear up the apparent discrepancies, for your sake more than for my own sake.

A. Oh, for my sake? You are very careful about me, aren't you, Mr. Myers? Now that is the only one thing I want.

Q. You said you left New York on or about Washington's Birthday.

A. I left New York on or about the 21st, wasn't it, Mr. Myers?

Q. After a talk with Mr. Fallon?

1320 A. Yes; after a talk with Mr. Fallon.

Q. He told you he had been retained by Arnstein?

A. No, he did not tell me any such thing.

Q. Will you now put it your way. What did he tell you?

A. Well, I won't tell you what he told me.

Q. Now let us have it on the record.

A. Well, I won't tell you what he told me.

Q. Why not?

A. Because I will not. That is all.

Q. That is not confidential.

A. Don't ever partners talk confidentially?

Q. Oh no; not in bankruptcy cases.

A. Have you a partner?

Q. No; but not in bankruptcy cases.

A. All right; we will let it stand. What do you want to know?

Q. What Mr. Fallon told you just before you went to Cleveland.

A. I will tell you nothing about what Mr. Fallon told me, because he told me nothing.

Q. Well, he did talk with you, didn't he?

A. What?

Q. Mr. Fallon did talk with you before you went to Cleveland?

A. Yes; he talked to me about the Fritz case.

Q. No; about the Arnstein case.

A. No. He talked to me about the Fritz case.

Q. What did he tell you about this case?

1321 A. He didn't tell me anything about this case.

Q. I want to get through with this, Mr. McGee.

A. I am telling you; I want to get through with it too; I don't want to be examined here every day; I have got something else to do, Mr. Myers. You made me notorious, you know; I am getting a lot of business through you.

Q. Tell us everything that Mr. Fallon said to you before you went to Cleveland.

A. I will not—you want me to tell you what he told me about the Fritz case?

Q. We won't get through with this if you do not answer.

A. We are going to get through with it to-day, absolutely.

Q. Whether you answer or not?

A. No. I will go before the Judge and tell him what Fallon said to me. You can put this on the record: He told me about the Fritz case. Do you want me to tell you what he told me about the Fritz case?

Q. I want to know what he told you about the Arnstein case.

A. He told me nothing about this case; absolutely nothing.

Q. Didn't he tell you that he had been retained?

A. Absolutely not.

Q. Didn't he tell you to go up and meet Arnstein in Cleveland?

A. He did not.

1322 Q. Well, did you go of your own accord?

A. I did, of my own accord; and also—well, I did go to Cleveland of my accord; I did.

Q. Then you were retained by Arnstein; is that it?

A. No.

Q. Then how did you come to make that trip to Cleveland? Who asked you to go?

A. I don't know.

Q. You do not mean that now.

The Commisisoner: Mr. McGee, that is trifling. Somebody asked you to go. Now who was it?

The Witness: Mr. Commissioner, I object to your comments on

this testimony. He asked me who asked me to go. I do not care what you ask me.

The Commissioner: You do.

The Witness: I am going to have this question——

The Commissioner (interrupting): Mr. McGee, you are not controlling this examination; you are a witness here.

The Witness: I am only a witness.

The Commissioner: You had better behave yourself.

The Witness: I am going to be a witness here, which absolutely, I am going to have the questions answered.

The Commissioner: Answer the question.

1323 The Witness: What did you ask me? What is your question?

The Commissioner: The stenographer will read it.

(Question read.)

The Witness: I was not retained by Arnstein until I met Arnstein in Cleveland.

Q. Who asked you to go to Cleveland?

A. I do not know who asked me to go to Cleveland.

Q. Did Mr. Fallon ask you?

A. To Cleveland? No, Mr. Fallon did not ask me to go to Cleveland.

Q. Who asked you to go to Cleveland?

A. I don't know who asked me to go to Cleveland. I did not intend to go to Cleveland when I started.

Q. Where did you intend to go?

A. Buffalo.

Q. Who asked you to go to Buffalo?

A. I don't know. Fallon told me to go to Buffalo.

Q. Did he tell you where to go in Buffalo?

A. Yes.

Q. Where?

A. The Iroquois Hotel.

Q. Did he tell you who to see there?

A. No.

Q. What did he tell you to do there?

A. Go and register.

Q. Under your own name?

A. Absolutely.

Q. You used no nom de plume at that time?

1324 A. Oh, absolutely not, Mr. Myers.

Q. He told you to go to Buffalo and register at the Iroquois Hotel under your own name?

A. Absolutely.

Q. And to wait for instructions?

A. For instructions? Would you call it that?

Q. What do you call it?

A. You name it, Mr. Myers.

The Commissioner: State the facts; never mind criticising.

The Witness: He has stated the facts.

Q. No; you state it.

A. Oh no. I was supposed to go to the Iroquois Hotel; that is all I am saying. But he is asking me a few questions.

Q. When you went to the Iroquois Hotel——

A. (Interrupting.) I did not go.

Q. You did not go to the Iroquois Hotel?

A. No.

Q. Where did you go?

A. I did not go to the Iroquois Hotel. I went to—you know that place out in Cleveland; that little hotel out there.

Q. The Winton Hotel?

A. Yes; I went to the Winton Hotel in Cleveland.

Q. How did you come to go to the Winton Hotel?

A. Because I received a telephone message not to go to the Iroquois, but to go to the Winton Hotel in Cleveland.

1325 Q. Where did you receive that telephone message?

A. The Braddock Hotel; 126th Street & Eighth Avenue; Morningside 8600 is the telephone number.

Q. From whom did you receive that telephone message?

A. I do not know, Mr. Myers.

Q. Do you mean to say that?

A. Absolutely. If I knew, I would not go on that fool chase I went on.

Q. You say you started for the Iroquois Hotel, and you were switched over to the Winton Hotel in Cleveland?

A. Absolutely, Mr. Myers.

Q. You do not know who switched you?

A. I know who switched me.

Q. Who was it?

A. I would not have been switched so much as I have been switched in the last two weeks; I will tell you that right now.

Q. Who switched you from the Iroquois to the Winton?

A. I don't know. If I ever get them, I will tell you.

Q. Well now, your visit to the Winton Hotel was not without bearing fruit, was it?

A. What do you mean by bearing fruit?

Q. You met your man at the Winton Hotel, didn't you?

A. What do you mean by "met your man"?

Q. Arnstein.

A. Did I meet Arnstein at the Winton Hotel?

1326 Q. Yes.

A. Absolutely.

Q. Well then, it was all right to switch your trip from the Iroquois Hotel in Buffalo to the Winton in Cleveland, wasn't it?

A. I don't know; there may be somebody in trouble up in Buffalo, don't you know; I may have to go up there too; I cannot tell that.

Q. That is what I want to clear up. You did not tell Judge Hand anything about the Iroquois Hotel when you were on the stand before, did you?

A. You did not ask it.

Q. You did not say anything about Buffalo while you were on the stand, did you?

A. You did not ask it.

Q. Weren't you asked to state everything about your trip?

A. I was not. You asked me very few direct questions, Mr. Myers, and I answered you just as directly as I could. And if you will get that testimony—and I want this down on the record, because Mr. Myers himself asked—if he would only ask me this question directly, I would answer it directly. You asked me that question, Mr. Myers, in front of Judge Hand, and Judge Hand never spoke a word; he just said "Answer," and I answered.

Q. Did Mr. Fallon ask you to go to the Iroquois Hotel in Buffalo?

A. Did Mr. who?

1327 Q. Did Mr. Fallon?

A. Did Mr. Fallon ask me to go to the Iroquois Hotel in Buffalo? Mr. Fallon asked me to go no place.

Q. Who asked you to go to the Iroquois Hotel?

A. Oh, to the Iroquois? Now that may be serious Mr. Myers; I will have to think about that. I think he did; I don't know whether he did or not, but I mean it was arranged for me to go to the Iroquois. I don't know whether he asked me or somebody else.

Q. Well, he told you that somebody called him up at his home in Mamaroneck, didn't he?

A. Yes, he did.

Q. He told you that the firm had been retained in the Arnstein case?

A. He did not tell me anything about the Arnstein case, because he did not know it.

Q. Didn't he tell you that he had gotten a call at his home?

A. Mr. Myers, listen; are you trying to retain us?

Q. I want to clear up this record before we get through to-day.

A. What do you want to know about the record? Let us get back to the record then.

Q. I want to find out how you came to be sent to Buffalo and Cleveland?

A. I was not to Buffalo, if you remember properly.

Q. But you were sent there first?

A. No, I was not.

1328 Q. You were asked to go there?

A. Absolutely.

Q. And you did not know what errand you were going on?

A. Absolutely not; but I thought, Mr. Myers, that somebody might want to be in trouble, and they would like to hire a couple of good lawyers; so I went up there.

Q. You do not mean to say you were looking around for business?

A. Absolutely; I am looking still; that is what I am still looking for, business. That is one thing I am still looking for, that is business; don't ever neglect that fact. I am looking for business still; and you gave me a lot of it too. I am going to go fifty-fifty with you after a while.

Q. You went to the Winton Hotel in Cleveland, didn't you?

A. I did.

Q. Before you went there did you call up Mr. E. P. Strong?

A. No; but after I got there—listen: Are you going to ask me all that? I have been over this fourteen times with you, Mr. Myers, and you know it.

Q. Not fourteen.

A. Three times.

Q. You went to the Winton Hotel?

A. Absolutely; and they had a school teachers' convention there; the worst old maids in the world were there.

Q. And you asked for Mr. Arnstein?

A. I did not.

1329 Q. What?

A. No sir.

Q. Who did you ask for?

A. I did not ask for anybody.

Q. Who did you meet there?

A. I met Arnstein there afterwards.

Q. Who did you meet first?

A. Who did I meet first?

Q. Yes.

A. I met nobody. I went out and tried to register, Mr. Myers—I will tell you everything—and they had a school Convention; they must have had six million old maids in Cleveland. And I went up there and tried to get a room, and they would not give me a room; and I was in a quandary, don't you know; you know how it is. I was supposed to go there and register, and I could not register. So I said "Where in God's name can I go?" So I thought of Ed. Strong—I never met him or anything else; but I called up his office and they told me he did not come to his office very much—you want all this?

Q. Yes.

A. They told me he did not come to his office very much. I said "Listen; this is Mr. McGee from New York. Is this the Strong that goes to New York?" Because he had been in New York, and got Fallon's bond on that thing, you see.

Q. On what thing?

1330 A. For Fallon; some administration thing—you have got all this. And the girl said "I know he has been in New York several times." I said "Is this the same Strong that I know?" I did not know whether it was the same Strong; it sounded like a firm name; and the one I expected to find, just his name. So I did not think he was the head of a firm, Mr. Myers. So I called him up and I said "Listen: I am in the Winton Hotel eating breakfast. If Mr. Strong calls up, tell him to come to the Winton Hotel; Mr. McGee would like to see him." That means me, when I say Mr. McGee. And I sat down in the Winton Hotel—do you want me to tell you what I had to eat?

Q. Go right ahead.

A. Orange juice, ham and eggs, potatoes. And all of a sudden I saw that big fellow walk in, see? This was about half past ten or

eleven o'clock in the morning. So I looked at this big fellow looking around and said "He looks good to me." I said "This must be the fellow." But I was wrong. And the next guy I looked over came in—that first fellow was wrong; that fellow that came in was not looking for me. So I looked over the second fellow, and the third fellow, and the fourth fellow, and the fifth fellow walked in and he said "Is this Mr. McGee?" I said "Certainly this is Mr. McGee." And he shook hands with me. He said "That is very

nice." I said "I am supposed to register here, and on account of this school teachers' Convention, I cannot get a room."

And I was eating ham and eggs at the time, you understand. And he said there would be no difficulty about that; the manager would register for me. So he got a room for me. And as I sat there with him the manager came in, you know, and he went out. And as he went out I saw Nicky coming down that—were you ever in the Winton Hotel, Mr. Myers?

Q. No.

A. Well, they have got—were you ever in the Astor?

Q. Yes.

A. You know how the Astor is. Well, the same thing in the Winton. In that Astor you know, the front stairs; you step from the dining room and walk into the main corridor; and I saw Nicky coming—

Q. (Interrupting.) All alone?

A. Absolutely.

Q. You had recognized him from having met him before?

A. Oh, I knew him before.

Q. What room did you get at the hotel?

A. What room did I get? I don't think I got any room. I think the manager gave me a room, but I never went up there, I don't think.

Q. Did Arnstein have a mustache at that time?

A. Well now, listen, Mr. Myers; has that got anything to do with our confidential understanding between Arnstein and myself, whether he has or has not got a mustache?

Q. You had better answer that.

A. Let the Commissioner rule on it.

Mr. Myers: The witness wants a ruling, Commissioner.

The Commissioner: What is the question?

Mr. Myers: The question is whether, when he met Arnstein at the Winton Hotel in Cleveland, Arnstein had a mustache.

The Commissioner: Describe his personal appearance, Mr. McGee.

The Witness: Let us have a ruling by the Judge, if you please?

The Commissioner: Ask one or two more questions, and you had better go before the Judge.

The Witness: I will go over to the Judge and answer this question. You want to know whether he had a mustache or not? Did he used to have a mustache?

Q. You had better answer.

A. We had better have a ruling on it I think; don't you, Mr. Myers?

Q. Let us have it, and we will get through with this. You remember whether he had a mustache or not.

A. Mr. Myers, I will tell you all this privately, everything I know.

I told you the other day, Saturday, and you bring me here
1333 to-day—

Q. (Interrupting.) We are getting a little more now.

A. All right; anything you want.

Q. Just answer that, will you?

A. Well, I want a ruling on it.

Q. No you don't.

A. I do. I want a ruling on whether—that is objected to as incompetent, immaterial and irrelevant.

Q. That is no objection in this Court.

A. It is not? On the ground that has nothing to do with the bankruptcy proceedings, whether the man has a mustache or has not?

Q. No.

A. Well, Mr. Gilchrist, the Commissioner, is going to rule on that question.

Q. He has ruled that you should answer.

The Commissioner: I direct you to answer, Mr. McGee.

The Witness: I would like a ruling from the Court, if you please, Commissioner.

The Commissioner: Next question.

Q. Have you told us in your testimony heretofore, all that was said by Arnstein to you on that occasion?

A. No, I have not.

Q. Will you please tell us the rest of it?

A. I will not.

Q. You won't tell us anything more about it?

1334 A. I will tell you what I told you before; but I will tell you nothing more. I will tell you everything that is told now, Mr. Myers. By that I mean I won't tell you everything that is told, because I cannot remember; but I will tell you as far as I can remember, everything he has told me.

Q. Go ahead; let us get through with this.

A. Mr. Arnstein met me; he shook hands with me and said "How are you, Mac?" I said "Fine; how are you?" He said "I have been greatly exalted in this country." I said "What do you mean by that?" He said "They put me down as the 'Master Mind.'" "Well," I said, "Aren't you?" He said "No. That is the biggest joke in the World." He said "I want to tell you"—and then we went over—you know where the Astor lays, don't you? You have been in the Astor. Well, you go downstairs in the Astor, don't you know, down in the Grill. That is the same thing in the Winton, don't you know. They have got a drug store over there. So he and I walked over to the drug store and we stood in the lobby of the drug store, and then

went in the hotel. And he said to me "That is the biggest joke in God's world, that I should be the 'Master Mind.'" He said "Myers must be crazy."

Q. Go right ahead.

A. I said "What do you mean by that? "Well," he said, 1335 "Picture me as the 'Master Mind' in this case." He said "I never received a bond. I never received a nickel. Don't know anyone in the concern. And Myers is trying to tell me about it." Then he told me about winning \$92,000 the day before, from a certain party you see. That is the \$18,000 you got in the box I mean, the next day. He said he won \$92,000—I am telling you the whole conversation—you want to hear it all now, don't you?

Q. Yes; I want to hear the whole story.

A. So he told me about the \$92,000. He said "I was playing with a fellow craps last night"—

Q. (Interrupting.) At Fannie Brice's home?

A. He did not tell me where it was, Mr. Myers.

Q. I beg your pardon.

A. And please don't interject those remarks.

Q. I beg your pardon; go right ahead.

A. He said "I was playing craps with a friend of mine last night," he said, "and when I got about \$50,000 winner, the fellow started to laugh; and I said to him 'What is it?' He said 'I can't tell you now, but I will tell you afterwards.'" So when he got up to \$92,000, the fellow said to him "I am going to tell you about this; this is funny." He said "You know in this market, from Wall 1336 Street, I just received \$100,000, and I got it in the bank that \$1,000, and I am going to give it to you to-night." And poor Nicky, up to \$92,000, went all the way from \$92,000 down to nothing; and the fellow got even. So the next night they played, and this bank account you have, Mr. Myers, where he won \$18,000 on him, you see. And you told me the other day, you know Nicky is not in this case at all; you know that, don't you? You told me that Saturday, didn't you now, Mr. Myers? Now tell the truth.

Q. Go ahead with your story.

A. You told me that, didn't you now?

Q. Go ahead with your story.

A. Anything else you want to know about the story? The next day he won \$18,000 and you jobbed the bank account, and he could not pay, and so on and so forth; that is all.

Q. What did he tell you about—

A. (Interrupting.) He told me he never received a nickel, and never knew anything about it; never had anything to do with it, and was absolutely clean.

Q. Did not even know Dave Sullivan?

A. Listen, Mr. Myers; we did not discuss Dave Sullivan.

Q. Well, I am asking you whether he discussed that.

A. No, he did not say that. Now don't interject those 1337 things. Ask me what he said.

Q. These are questions. Did he say anything about Dave Sullivan?

A. He did not; and I did not ask him.

Q. Or about Bowles?

A. No.

Q. Or Easterday?

A. No; we did not discuss those.

Q. You did not discuss any names?

A. We did not. I have gone all over this five times. If you want me to write it out in detail, I will give it to you and send you a letter about it.

Q. And you left him at the hotel?

A. Absolutely.

Q. You have now told us everything he said to you on that occasion?

A. Maybe not; maybe he said a few more words—"How are you" or something like that; he may have said a few words to me, as a matter of fact; I don't remember just now.

Q. He said nothing about Nick Cohen?

A. I never heard that name until you mentioned it, Mr. Myers. You know we talked for half an hour, three quarters of an hour; we said a lot of things. I have waived that confidential communication between attorney and client, and I have told you as much as I could, Mr. Myers; that is what Arnstein said to me, and what I said to Arnstein.

Q. Before you left did you have any arrangement with 1338 him how you could get in touch with him again?

A. Absolutely, yes; and you know it.

Q. What was that arrangement?

A. I would go to Pittsburgh and stop at the William Penn Hotel, and register under a certain name, and he, or somebody representing him would call me up—you have all this testimony.

Q. Did he give you any telephone number?

A. Absolutely not.

Q. Mr. Fallon was mistaken then when he told the Judge—

A. (Interrupting.) I don't care about Mr. Fallon; don't ask me that; that has nothing to do with me. Ask me about myself. Don't ask me about my partner. Ask him about that himself. I don't stand for him.

Q. Don't you care what he said?

A. I don't care if he said it or not.

Q. Does it make any difference whether he told the whole situation?

A. No; because Mr. Dooling says we made inconsistent statements. I don't want to have Mr. Fallon and myself, don't you know—you can ask me what I know; don't ask me what Mr. Fallon knows. He knows more than I ever thought of knowing; I wish I knew as much as he does; we would make twice as much as we do now.

Q. Did you talk to anyone else about this case on that trip 1339 to Cleveland?

A. Absolutely not—yes, I did too. I am going to tell you something funny. I went out in the smoker, don't you see, and in that smoker there is five or six men, and they all started to speak

about the Arnstein case. And I sat back, don't you know; and I said "I am trailing on this Arnstein case." They thought I was a copper, don't you know. I just listened to hear what they said. And they all spoke about the Arnstein case; what a wonderful man that Arnstein must be, to steal that \$5,000,000 worth of Bonds and get away with it. So I sat in the smoker and I listened. And I looked at them and I think; and finally they all go to bed; and there is a drummer of a fur house; we represented one of them in the Income Tax case in the United States Court, before one of these Judges here. And I got talking to him you see; and he said to me "Listent; what are you doing out here?" Of course he recognized me. I said "Listen; I am going out to get a witness in this Fritz case; the doctor who examined Fritz'- wife when she died, see?" I said "I am going to get that witness and bring him back to-morrow." He said—we had a lot of talk, Mr. Myers; we talked four or five hours, the two of us. And that is about all I talked about.

He asked me if I knew anything about the Arnstein case.

1340 Q. Did you meet anyone else in Cleveland besides Arnstein and E. P. Strong?

A. Absolutely not.

Q. While you were in Cleveland on that trip?

A. Did I meet anybody? I met a lot of people; I did not know them though.

Q. Well, did you talk to anybody else about this case while you were in Cleveland?

A. Absolutely not.

Q. Did Arnstein ask you about his wife?

A. Yes.

Q. Did you bring any message from his wife?

A. From his wife? I never knew his wife until after I came back from Cleveland.

Q. Di you take any letter to Arnstein?

A. Did I take any letter? No.

Q. Or any other communication?

A. No sir.

Q. Did you receive any communication from Arnstein to be delivered to anyone else?

A. Yes; I received several communications from Arnstein.

Q. While you were in Cleveland?

A. Yes sir.

Q. What were they?

A. I refuse to—that is one thing that I will not tell you about—I told you all about it, what is the use of kidding? I told you all about it.

Q. You want to finish this to-day, don't you?

A. Yes.

Q. Then answer.

A. I told you all about that.

1341 Q. Did you get any letters from Arnstein while you were in Cleveland?

A. Any letters?

Q. Yes.

A. No.

Q. Or any other communication?

A. No sir.

Q. Did you carry back any message from Arnstein?

A. One hundred of them; one hundred messages I carried back, right in my own little body.

Q. To whom?

A. To myself and everybody else in the World.

Q. Did he send any message to his wife through you?

A. Yes sir.

Q. What was that?

A. Not to let anybody in that house; he is afraid of being framed.

Q. What other message, and to whom?

A. That is all.

Q. I understood you to say that you took back several messages?

A. To myself.

Q. Did you take any messages back to anyone else?

A. No sir.

Q. To Mr. Fallon?

A. Well, whatever I took back to myself I took to Fallon, because Fallon and I are partners.

Q. What were the messages?

A. You don't want those, do you?

Q. Yes. I want to get through with this case.

1342 A. Well, I will give them to you. It is about bail. I have testified five times about that; that is all.

Q. Nothing else except bail?

A. Absolutely nothing else; except he is innocent, and he was not going to come here and waste himself in the Tombs.

Q. Did you call anyone on the telephone while you were in Cleveland, outside of Mr. Strong?

A. Did I? No.

Q. Did anyone call you on the 'phone while you were in Cleveland?

A. No sir.

Q. Did you get any paper of any kind from Mr. Arnstein while you were in Cleveland?

A. No. I got a couple of keys to a strong box. You and I will go up and open them some day too.

Q. Are those keys to one of the boxes that Miss Brice testified about?

A. I don't know what she testified about; why ask me about that?

Q. Well, what keys are they? To what boxes?

A. I got two keys. You and I will go up some day and open them.

Q. What boxes?

A. One key for the Pacific box; and the Ansonia. I have got the keys here now.

Q. Will you let us have them please?

A. I think one is mislaid. I will bring it down to-morrow, and we will go up—let's you and I go up and open them.

1343 Q. Let me have them, will you? You may lose the other.

A. I think I lost it now. I will tell you that right now; I cannot find it.

Q. Have you got those keys?

A. No, I have not got them. I will give them to you to-morrow, Mr. Myers.

Q. What did Mr. Arnstein tell you about the boxes?

A. He told me that they have absolutely nothing in them.

Q. Did he tell you what he had taken out?

A. You have got the records. H has not been near them—one box he has not been near in a year; the other he has not been near in six months.

Q. Did you discuss any safety boxes with him?

A. Yes sir.

Q. Outside of those two?

A. He said that is all he had.

Q. Did you ask him where he had these securities which he was supposed to have taken?

A. Listen: He told me he never received a nickel on those Bonds or anything else.

Q. And you did not get any retainer while you were there?

A. I wish I had. If I knew this was going to drag this long, I would have got it; don't worry about that. But I did not get it.

Q. Mr. Strong never gave you a retainer?

1344 A. You know better than that, Saul.

Q. No; I want to get it on the record.

A. No.

Q. Did anyone else?

A. No. We have not asked. That is how we differ, you know. You know what you told me Saturday; that is how we differ from other people.

Q. You have not heard directly from Arnstein since you left Cleveland on February 23rd?

A. No. I heard indirectly.

Q. You heard indirectly through Henry Stern?

A. Yes sir.

Q. And from anyone else?

A. No one else. I have not heard since I left the Onondaga Hotel in Syracuse.

Q. Have you found out that Henry Stern is a resident of Cleveland, Ohio?

A. No; I have not found out anything about Henry Stern. I called Henry Stern twice. I called him once from Rochester, and I called him up from Syracuse.

Q. And you did not meet him in Cleveland this first trip?

A. I did meet him.

Q. You did? When you were in Cleveland?

A. No; I met him in Pittsburgh I mean. Pardon me for that mistake.

Q. You do not know where the bankrupt is now?

A. No, I do not.

Q. And you have not seen him since you left Cleveland?

1345 A. I have not seen him since when I left Cleveland.

Q. And no one has told you where the bankrupt is?

A. No one has told me where the bankrupt is.

Q. Or where he has been since you left Cleveland?

A. Or where he has been since I left Cleveland.

Q. And you would not know where to find him?

A. And I would not know where to find him.

Q. So far as you know, Mr. Fallon would not know where to find him?

A. So far as I know, he does not know half as much about the case as I do.

Q. So far as you know, Fannie Brice would not know where to find him?

A. No.

Q. Nor Rogers?

A. Please don't mention that fellow.

Q. Nor anyone else; so far as you know, no one knows where to find him?

A. Will you forget Rogers in this case? His mother and sister and everybody are getting worried about him.

Q. Now, if the District Attorney agreed to take a smaller bail, how would you communicate with Arnstein?

A. Well, listen, Mr. Myers: Isn't that a very funny question to ask me?

Q. I want to know all you know of this thing.

A. But listen: If you go and get the District Attorney to

1346 consent to a small bail, I will tell you how I will communicate.

Now you do that, will you, Mr. Myers; and I will tell you. I will go you, on the level, if you do the first part of that question, if you do that, I will give you the last part.

Q. Well, without the first part.

A. Oh, without the first part, then I cannot, Mr. Myers; you know that.

Q. Your testimony would be just as truthful in the second case, wouldn't it?

A. My testimony is always truthful, under oath.

Q. You know you are under oath to-day, don't you?

A. Well, I thought I was; I did not know it until you reminded me a few minutes ago, Mr. Myers.

Q. Now, being under oath, will you please state how you would go about finding Arnstein?

A. You want that from me?

Q. Yes.

A. You really want that?

Q. Yes.

A. You have not got a chance in the World; because it is objected to as incompetent, immaterial and irrelevant. I will tell you now: I would insert an advertisement in a certain newspaper—now, you

do not want to disclose this advertisement to these newspaper people, do you? Because it is one paper, as soon as bail is fixed, 1347 there is going to be an ad. in the paper, you see, in a certain paper; and as soon as Nick Arnstein, or Nicky, or whatever you want to call him, saw that advertisement, he would come right in you see. That is the absolute truth. Now you do not want me to disclose that now?

Q. With whom did you make that arrangement? With Stern?

A. Now listen, Mr. Myers: You are not going to ask me these foolish questions. Now you do not want that; let us get down to the issues.

Q. Let us get through with this.

A. That is what I want to do; for once and for all, no more and no more.

Q. With whom did you make that arrangement, Mr. McGee?

A. That is objected to as incompetent, immaterial and irrelevant; confidential communication between attorney and client.

Q. You waived all that.

A. I know; but I waived what I want to, and kept what I want—because I am going to keep that communication absolutely secret, you see.

Q. Did you make that with Henry Stern?

A. No.

Q. With Fannie Brice?

A. No.

Q. With Mr. Fallon?

A. No.

Q. Or Strong?

A. No.

Q. With whom did you make it?

A. I don't want to—don't you know what a confidential 1348 communication means, between attorney and client? Arnstein and McGee; that is all.

Q. Well, Arnstein made the arrangement with you?

A. Absolutely.

Q. While you were in Cleveland?

A. Absolutely. Do you want me to give you the arrangement? You don't want him back, do you? Do you want him back? If you want him back, and Mr. Dooling wants him back, I will get enough security to guarantee any bond in God's world; but no bonding company will write it. Now, if you want him back, and Mr. Dooling wants him back, let you two go before that bonding company and tell him that you have no objection to their writing that bond; because they won't write a bond for us.

Q. Which bonding company do you refer to?

A. I refer to them all; I have talked to four of them.

Q. Well, which ones?

A. I won't tell you that now; because there is nothing—

Q. (Interrupting.) The New Amsterdam?

A. Well, the New Amsterdam, that was on account of that one-eyed cheater, Joe Topper. They called up Saturday morning; Nelson called up from Baltimore.

Q. The Fidelity & Casualty Co.? You were mentioning four companies.

1349 A. Oh, I mentioned six or eight; I have gone all around the circuit.

Q. And this security is jewelry of Miss Brice's—

A. (Interrupting.) You know what the bonds is going to be. What do you think the bond is going to be, yourself?

Q. We do not want to discuss that. The jewelry of Miss Brice, and the home of Miss Brice's mother; is that right?

A. And whatever I have got too, Mr. Myers; not much.

Q. You say that while you were in Cleveland you arranged with Mr. Arnstein whereby you would put an ad. in the paper at the proper time?

A. We would put an ad. in it; as soon as the bond was written there would be an ad. in the paper. I spent my last cent on this case, I will tell you right now; I am through with this case until you bring him in.

Q. Well, who is to put the ad. in the paper?

A. I don't know. There is going to be an ad. in the paper; that is all I know.

Q. Well, who else knows about it besides you?

A. Nobody I don't think. But I don't think I will put it in any more, because I don't think I can get the bond written.

Q. Well, who knows what the ad. is going to be, besides yourself?

A. Well, two people.

Q. Mr. Fallon?

1350 A. Now listen: You don't want me to give this confidential communication. I am giving you everything I can in God's world. I want to get that fellow back; want to get my money out of the case, and then I want to retire.

Q. Now, did Mr. Arnstein tell you when you were in Cleveland, who you would meet in Pittsburgh?

A. No.

Q. Then how did you know whether the person that came to see you in Pittsburgh was a proper person?

A. They called me up—I was supposed to register under a certain name at the William Penn Hotel in Pittsburgh—you know that name: "John Rogers"—and don't mention it again in the Press, because his mother and sister are worried about it. I went there and registered under that name, and I got a call—Mr. Dooling knew all that before I started out.

Q. How did you know whether the man that came to see you was the right party?

A. Well, he talked about the case; that is the only thing I know; whether he is the right party or not. He gave me a letter.

Q. How did you know it was Arnstein's handwriting?

A. I didn't know. I don't think I ever saw his handwriting before—I may have; I think I did. I think I saw it—I mean, I did not recognize it.

1351 Q. Where did you see it before; in what connection?

A. Oh, we were out two or three times together.

Q. Before you saw him in Cleveland?

A. Oh, we were out six months ago. I met him six months ago, ten months ago, twelve months ago. I knew him.

Q. You had never had any professional relations with him?

A. Never had any professional relations; just met him as we would meet other people, socially, don't you know.

Q. You never met him in connection with any Bond thefts?

A. I never knew he ever had any connection with Bond thefts, until you tried to start it, Mr. Myers.

Q. Well, you knew about the murder of that messenger boy, did you not?

A. Did I know about the murder of the messenger boy?

Q. Yes. Wasn't your firm retained in that matter?

A. Not yet, Mr. Myers.

Q. Well, hadn't you ever seen this Binkowitz boy?

A. I never saw you until you started this examination.

Q. We are talking about the boy who was murdered.

A. I never saw him either.

Q. You never saw him after he was dead?

A. No.

Q. Did Mr. Fallon, to your knowledge, see him?

A. Absolutely not.

1352 Q. Did Mr. Fallon——

A. (Interrupting.) No; neither one of us, that know of.

Q. Either dead or alive?

A. Dead or alive.

Q. And you had never been consulted in that matter by anyone?

A. Never.

Q. No one in your firm had?

A. There are only two of us, Fallon and myself.

Q. Mr. Fallon had never been consulted in connection with the Binkowitz murder?

A. He never spoke to me about it. I don't think he has ever been. He never mentioned the case. I don't think he knows anything about it.

Q. Before the flight of Mr. Arnstein?

A. What did you say; before what?

Q. The flight.

A. You call it flight?

Q. Or departure; would that soften it?

A. What about that again?

Q. Before Mr. Arnstein went away, on or about Lincoln's Birthday——

A. (Interrupting.) No; I went away on or about Lincoln's Birthday.

Q. No; you went away on or about Washington's Birthday; isn't that right?

A. That is funny; I have two kids; one born on Lincoln's Birthday and one born on Washington's Birthday. I went away on one of them.

1353 Q. You know when you went away.

A. You know when I went away too; there is not anybody knows it better than you do.

Q. Before Arnstein went away on Lincoln's Birthday, had you been consulted in connection with any Bond thefts?

A. I met him socially about six months before——

Q. (Interrupting.) I am not talking about Arnstein.

A. No; we have never been con-ulted about any bond thefts.

Q. You had been consulted by Sullivan & Company?

A. They were not Bond thefts, were they? They were brokers.

Q. Weren't they connected with those Bond thefts?

A. Mr. Myers, you don't think Sullivan & Company is connected with the Bond thefts, do you?

Q. I certainly do.

A. You do? Well, there is another rash statement by you; that is all.

Q. Well, isn't it a fact that Mr. Arnstein and Nick Cohen circulated those stolen securities through Sullivan & Company?

A. Do you want me to testify?

Q. Yes.

A. How in God's name can I? You know I don't know.

Q. Well, hadn't you ever been so informed?

A. I never heard of it. I am going to tell you something else: Sullivan told me, Bowles told me, Easterday told me they did not know Nick Arnstein. Bowles, Easterday and Sullivan, the three of them, told me that.

1354 Q. That they had no connection with Arnstein?

A. Never saw him or knew him or anything else.

Q. Well, wasn't it at Arnstein's request that your firm represented Sullivan & Company?

A. No, it was not. Do you want to know the full history of that?

Q. Yes.

A. That is a very funny way: There is a fellow by the name of Johnny Dyer, who afterwards became Municipal Court Judge; Johnny Dyer thought Fallon was the best lawyer in the State, you see; and so he wanted to get Fallon in the case. And I made a motion for the reduction of bail, and I sent up to get Fallon down there at the time for the motion, to argue the motion. Fallon was not there. They went to Wasservogel, and they paid Wasservogel \$2,500—I mean Wampler, whatever that attorney is——

Q. In Washington?

A. Yes, in Washington. He came on; and they paid Wasservogel \$2,500, and Wasservogel kept that you see. And then he came up afterwards, and they hired us, and never paid us a cent; and we are trying to get that \$2,500 out of Wasservogel.

Q. Then you got into the Sullivan case through Judge Dyer?

A. Judge Dyer.

1355 Q. And through Mr. Newman?

A. I would not say through Mr. Newman. Through New York City.

Q. Well, Mr. Dyer got in through Mr. Newman?

A. I don't know how he got in. Ask him.

Q. Well, didn't you ever talk that matter over with Mr. Newman?

A. Who; Randolph?

Q. Yes.

A. I may have. I always talk everything over with Randolph. Do you know how we got into this case? Through Sugerman—I mean, this is not for the papers—but through Sugerman. Sugerman was arrested the same day that Sullivan was, don't you see, in the Tombs, and Sugerman told him how good lawyers we were, you see, and Sullivan believed him foolishly; and then he went on and asked us.

Q. Now, isn't it a fact that Sugerman, Newman, Sullivan, Bowles and Easterday were all mixed up—

A. (Interrupting.) Now leave out Sugerman, will you?

Q. (Continuing.) —were all mixed up with Arnstein in connection with these Bond thefts?

A. What is that question again?

Q. (Question read.)

A. I don't know anything about Sugerman, Sullivan, Arnstein, or anybody else in those Bond thefts, and you know it, Mr. Myers.

Q. Well, did you never discuss that with Sullivan?

A. Have I ever discussed what?

1356 Q. These Bond thefts.

A. I don't think I have.

Q. Or with Bowles?

A. I don't think I have.

Q. Or with Easterday?

A. I am sure not with Easterday.

Q. Or with Newman?

A. Oh, I am sure with Randolph.

Q. You have discussed it with him?

A. I have not.

Q. Or with any one of the three Sugerman brothers?

A. Three Sugerman brothers? One is out in Des Moines; the other one is here in New York. Only two that we know.

Q. Only two that you know?

A. Oh, there are three all together. Absolutely not. They never had anything to do with this.

Q. Now, you know that Mr. Sullivan was arrested on an indictment charging him with having received the proceeds of stolen securities, don't you?

A. I know it? You mean I know it? I did not.

Q. Well, didn't you read the indictment?

A. I did not.

Q. Well, you represent Sullivan and Bowles, do you not?

A. The firm does; not me. They would not let me represent them.

Q. Didn't you ever read over the indictment?

A. Oh no. Listen: I am going to tell you something right now: I think we don't represent them to-day.

Q. Well, you have represented them right along?

A. Oh no. We have been imposed upon; but I don't think we represent them to-day.

1357 Q. What does that mean?

A. You know better than I do.

Q. Well, let us have it on the record.

A. Oh no; you tell it to them. That has got nothing to do with this. You tell it to them; go on.

Q. Do you say you never discussed stolen Bonds with them?

A. I never discussed with Sullivan stolen Bonds or anything else. I never spoke to him, except about getting his bail. I don't think I ever spoke one hundred words to Sullivan in my life.

Q. But you did go down to visit him in Washington?

A. Oh no. He was in the Tombs. I went to Washington the night he was in the Tombs; I raised the bond down there.

Q. You went to Washington to visit Easterday, did you not?

A. No. I went down to visit the Raleigh Hotel, and stayed there for eight days. I visited Mr. Sheetz—I will give you a laugh now—do you want to hear about this story?

Q. Go right ahead.

A. Sheetz—did you ever hear about the candy man? The Martha Washington candy man? You know him, don't you?

Q. Go right ahead with your story.

A. He put up \$25,000 cash, and I brought it back to New York, and we got that bail. And we paid \$2,000 for it. Now, is there anything else about that? I was down there eight days and

1358 never got a nickel, and I paid my own way.

Q. Who did you pay the \$2,000 to?

A. To the bonding company.

Q. What company?

A. New York company?

A. Yes.

Q. Well, you had a talk with Easterday while you were in Washington?

A. Absolutely. I talked with—Gloria Ford had just opened up a new show; I talked with her too, Gloria Ford.

Q. Did you discuss the case with Easterday?

A. No. I talked more about Gloria Ford; she had opened in a show, and I wanted to see her succeed.

Q. Did you talk with Bowles while you were in Washington?

A. Absolutely, yes.

Q. Did you discuss this case with him?

A. With Bowles? Which case are you talking about? Are you talking about the Arnstein case, or are we just rambling around the World to see who our clients are?

Q. We are talking about the Arnstein case and the Sullivan case.

A. What has the Sullivan case got to do with this case?

Q. Well, we claim the Sullivan & Company hypothecated these securities.

A. Why don't you subpoena him here and ask him? Certainly I talked to Bowles.

1359

Q. And did you ask him what connection he had with this matter?

A. I asked Bowles so many questions he didn't know where he was standing, see? Because I did not like him.

Q. Well, did you discuss the question of stolen Bonds with him?

A. Which Bonds do you mean, stolen?

Q. Any bonds.

A. What stolen bonds?

Q. Any stolen bonds.

A. We never stole any bonds that I know of our clients, that I know of yet; so I never discussed any stolen bonds with them.

Q. Don't you know the claim against Sullivan & Company is that they distributed those stolen bonds which were supposed, or alleged to have been stolen by Arnstein and Cohen?

A. You don't mean to tell me that is true, do you?

Q. I am asking you a question, and I ask you to answer it.

A. You ask me about Arnstein; don't ask about Sullivan.

Mr. Myers: Will you read the question?

The Witness: I object to it as incompetent, immaterial and irrelevant, and has got nothing to do with this proceeding, and absolutely, on the part of Saul Myers, trying to—

M. Myers (interrupting): Please read the question.

1360 (Question read as follows: Don't you know the claim against Sullivan & Company is that they distributed those stolen bonds which were supposed, or alleged to have been stolen by Arnstein and Cohen?)

The Commissioner: You can answer that question, Mr. McGee, without any trouble.

The Witness: Certainly I can answer it. Absolutely not.

Q. Now, when you went to Pittsburgh and Rochester and these other cities—

A. (Interrupting.) I went there, and you know I did too.

Q. While you were in Pittsburgh, Mr. McGee, were any one of those three detectives with you?

A. They were absolutely with me.

Q. They were not all three with you?

A. I don't know whether they were all three or not. I figured that they were with me in spirit, if they were not in body, don't you know.

Q. You testified before that two were kept at another hotel.

A. No; the three of them.

Q. Well then, not one of those three detectives was with you when you were in this hotel in Pittsburgh?

A. What?

Q. Do you say that not any one of the three detectives
1361 were with you while you were at this hotel in Pittsburgh?

A. What do you mean, "with me"?

Q. Well, you stayed at the hotel for several days, did you not?

A. I stayed there Saturday, Sunday, Monday and Tuesday.

Q. Now, which one of those three detectives, about whom you have testified, stayed at the same hotel you did during that period of time, if any?

A. None that I know of. They may have been there—I really think they were there, don't you know. They may have been there. I don't know.

Q. You testified the last time you were here that two of them stopped at another hotel.

A. No; I said three of them stopped—you know our agreement was, when we left, the agreement with Mr. Dooling—if you want to understand this thoroughly, if you want the whole story?

Q. Yes.

A. Our agreement with Mr. Dooling when I went to Pittsburgh, it was under these circumstances: I had arranged with Arnstein when I left him in Cleveland—what is that day? Lincoln's Birthday, or whatever it was—the 23rd, Washington's Birthday—that I would be in the William Penn Hotel in Pittsburgh on the next Saturday, under the name of Rogers. You called me down here in the meantime and examined me, when I came back; and immediately 1362 detectives—about six detectives had me, see?

Wherever I went, detectives went. I could not get out of this town, do you see? So Mr. Dooling asked me to come down and talk with him. And I went down and talked with Mr. Dooling. I said to Mr. Dooling, "I can get into communication with Arnstein by being in a certain place at a certain time." And he said "Where is the place?" And I said "I won't tell you." "But" I said, "I can get into communication with him. I want him to surrender." So Mr. Dooling thought it would be a good plan for me to have detectives with us, so that we would not be annoyed when I got there. So they agreed with me I should go to that place, talk with that man, if he was there, and give me three hours to talk with him. I told Mr. Dooling that I would come back and tell him just what I had been doing; who I met, and whom I was talking with. So that is how, each one of them wanted the arrest, don't you know? You know how it is.

Q. The question is whether any one of those three detectives—

A. (Interrupting.) I don't think any one of them was in my hotel, that I know of. I don't think they were registered there.

Q. Did any one of the three, so far as you know, see Henry Stern while he was there?

1363 A. I think they saw everybody whom I talked to; my opinion, don't you know what I mean?

Q. You had Stern up in your room, did you not?

A. What is that again?

Q. (Question repeated.)

A. Yes sir.

Q. Was any one of those three detectives in the room at the time?

A. Oh no; but I think they saw him. I don't know. I always thought they saw him.

Q. But they did not know who he was, did they?

A. I don't know what they know. You have to ask them.

Q. Did you not discuss that with them?

A. The last thing I discussed in this case with those detectives; because I figured they were there to plant me if they could. Do you understand that? I figured they were there to get Arnstein and get everybody else in God's world; and I played absolutely on the level with them. I told them every message I got, and everything else; but I did not trust any one of the three.

Q. Did you tell them that you had been in touch with Stern?

A. Absolutely; I called them up and told them.

Q. When Mr. Stern called to see you with a letter from Arnstein, did you immediately tell those detectives?

A. I called them that day at three o'clock; and that was 1364 right after he left. I telephoned right after.

Q. After Stern had left the hotel?

A. Yes.

Q. So that they could not follow Stern?

A. Yes; so that they could not.

Q. Is that right?

A. That is right, Mr. Myers; so that they could not follow him.

Q. And they did not follow him, so far as you know?

A. Not that I know of. And I hope they did not. The results have proven that they have not.

Q. Well, if you had told them that Stern was going to call on you they would have been able to follow Stern?

A. I don't know what those three detectives were doing. They are not like us, Mr. Myers; they are only ordinary persons. I can not figure what they would do. I know what you and I would do in that case.

Q. Well, you took them along so that they could find Arnstein, didn't you?

A. Listen: Have I got to go over this again? I took them along so that Arnstein would come back here. My God! I am the first person in this City that wants Arnstein back. I want him back more than you do, Mr. Myers; you know why, don't you?

Q. You mean so that you shall receive your fee?

A. Well, now, why discuss these pecuniary things among friends?

1365 Q. You won't tell us how you could find him now?

A. Well, I will tell you how I can find him now. Do you want to find him? You write the bond and you will find him. I will tell you that right now. If you can get any bonding company to write that bond, Mr. Myers, within 72 hours after that bond is agreed to be written by the company, Mr. Arnstein will walk in here in this Court, or in the General Sessions Court.

Q. Why do you say 72 hours?

A. Because that is what I understand it will take, the time.

Q. For him to travel?

A. Yes.

Q. You mean to convey the idea he is 72 hours away?

A. I do not mean to convey any idea. But if you can get any bonding company to write that bond, he will be here, Mr. Myers; and you can write the bond quicker than anybody in God's world.

Q. Is he 72 hours away from New York?

A. By aeroplane or by rail; which do you mean?

Q. How do you understand he can come here in 72 hours?

A. I say within 72 hours he will be in here, pleading "Not Guilty," with the right to inspect the Grand Jury minutes, and come down here and greet Saul Myers and say "You are the best friend I ever had, Saul." That is all I can say about him.

1366 Q. How do you understand that? From whom do you understand it?

A. My own observations, communications. It took me 24 hours to get—as you know, I testified before it took me 24 hours to relay telephone messages. I say if it took 24 hours to relay a telephone message, it will at least take 72 hours to travel by rail.

Q. You have no information as to where he is?

A. I would send you out after him if I did. None; absolutely none; I don't know where he is.

Q. And you do not know anyone who has any such information?

A. I do not know anybody else. You have got as much information about Arnstein as I have, and you know it.

Q. Will you tell the Court, so that we get through with this now—

A. (Interrupting.) I want to get through with it.

Q. (Continuing:) —in what paper you are going to put that ad?

A. No; you don't want to know that, do you?

Q. Yes; we want to know.

A. You don't want to stop him from coming in, with that ad, do you?

Q. We want all the information we can get.

A. Do you really want to know that? Well then, I will refuse to testify, on the ground it is a confidential communication between attorney and client.

1367

Q. Then you got the information from Arnstein?

A. Absolutely.

Q. And you got that while you were in Cleveland on or about February 23rd last? I mean you did not get that since?

A. No; I got it from Arnstein.

Q. You got it the first time?

A. You don't want to know the paper, do you? I don't want to boost one paper above the others, don't you know. You don't want that. That will only stop him from coming in. You want him in here, don't you?

Q. I certainly do.

A. Well, as soon as the bond is written, that advertisement is going to be placed in that paper, and he is coming right in.

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

Adjourned.

1368 WILLIAM J. FALLON, being first duly sworn by Commissioner Gilchrist, testified as follows:

Examined by Mr. Myers:

Q. You are a member of the Bar?

A. I am.

Q. Are you the attorney for the bankrupt in this proceeding?

A. I am.

Q. When were you retained?

A. That calls for the disclosure of a confidential communication, which I refuse to make.

Q. Who retained you?

A. That also calls for the disclosure of a confidential communication, which I refuse to make.

Q. Were you retained by talking with the bankrupt?

A. I refuse to answer, for the reason that that calls upon me to bring forth a confidential communication, and I refuse to do it.

Q. Were you retained by talking with someone for the bankrupt?

A. I refuse to answer that, for the same reason, Mr. Myers, with all due deference to you. May I have it spread upon the record that my answer to each question is because each question calls for the disclosure of a confidential communication.

Q. Did you see the bankrupt in this proceeding at any place during the past two weeks?

A. I did not.

Q. Did you talk with the bankrupt at any time, at any place, during the past two weeks?

A. If I did, it would call for the disclosure of a confidential communication, which I refuse to give you.

Q. We are not asking you to disclose any confidential communication with your client; we are asking you to state the fact. Did

1369 you talk with the bankrupt in this proceeding at any time during the past two weeks?

A. Well, that could only be because of a conversation that I had with him, and I refuse to disclose anything about any conversation with this man.

Q. We are not asking you to state the conversation.

The Commissioner: You are not asked about any communication at all; you are asked if you had a conversation. What that conversation was is a different proposition.

The Witness: I did not talk to him.

Q. You say you did not talk with the bankrupt at any time during the past two weeks?

A. Precisely so.

Q. Or during the past month?

A. Precisely so.

Q. Did you send any telegram to the bankrupt at any time during the past month?

A. I did not.

Q. Did you receive any telegram from the bankrupt at any time during the past month?

A. I did not.

Q. Did you receive any communication of any kind, directly or indirectly, from the bankrupt, during the past month?

A. I did.

Q. When?

A. I think it was last Monday, or perhaps Sunday.

Q. Where?

A. At my home in Mamaroneck.

Q. What was the nature of the communication?

A. That I refuse to disclose.

Q. I am not asking you to state the contents of the conversation, but I am asking you to state the nature of the communication.

A. That calls for the disclosure of that which the conversation developed, and that I refuse to give you.

1370 Q. Was the communication by telephone?

A. By telephone, yes sir.

Q. Was it by Long Distance telephone?

A. That I do not know; I was only at one end.

Q. You do not know whether it was Long Distance or not?

A. I do not.

Q. That was on Monday of this week?

A. Yes sir. Now I may possibly be wrong; it may have been Sunday, or Monday; I won't be positive about that, Mr. Myers. It was on a holiday, in any event. It was one of the two holidays.

Q. That is near enough.

The Commissioner: Mr. McGee testified it was on Sunday.

The Witness: Whatever he says is right about that; my recollection is not as good as his on that.

Q. You say that either last Sunday or last Monday you had a communication from the bankrupt in this proceeding, and it was by telephone?

A. I said, well, not from the bankrupt, no; I said I had a communication from some one.

Q. Who was the some one?

A. That I refuse to disclose; that was brought only home to me by the conversation. I know nothing about the identity of the person—let me get this on the record—

Mr. Myers (interrupting): Just answer the question please, Mr. Fallon. Mr. Commissioner, will you please direct this witness to answer the question?

The Commission-: That has been threshed out before Judge Hand, Mr. Fallon.

1371 Mr. Myers: Your Honor understands that Judge Hand instructed this witness that he must testify fully as to the whereabouts of this man, and as to the whereabouts of any assets. Is that correct, Mr. Fallon?

The Witness: I am entirely willing to do that.

Mr. Myers: Is that a correct statement of what Judge Hand said?

The Witness: We all know what Judge Hand said, and we all know what the law is, so there is no difference of opinion about that. Now here is my answer to your question: The only thing I know about who it was that called me up, is that which was disclosed in that conversation. Now that is my answer.

The Commissioner: Was that conversation with a client of yours, Mr. Fallon?

The Witness: I refuse to disclose with whom I had that conversation.

The Commissioner: Was that conversation with a client of yours?

The Witness: The only way the status of client could have been established with that party was on account of that conversation, and I am not going into the conversation. Up to that time he was no client of mine.

Q. Well then, you talked with some one last Sunday or Monday who was not a client of yours, about this case?

A. He was not a client of mine before that.

Q. Therefore you will have to answer that question, Mr. Fallon.

A. I am telling you that the man that called me up, I only know the man because he told me over the phone who he was; and he was no client of mine up to that time.

1372 Q. Who did he say he was?

A. I refuse to disclose what he said to me.

The Commissioner: Answer the question, Mr. Fallon.

The Witness: I refuse to disclose who it was—who the man said he was over the telephone to me, because that was a part of my employment in this case, and I will not go into that conversation.

The Commissioner: That was all threshed out with your partner before Judge Hand the other day, Mr. Fallon.

The Witness: I just had a conversation with Judge Hand, in which he said that any conversation that I had—and as I understand it, that is the law—any confidential conversation that I had with a client, or anyone acting for a client, is a confidential communication in all its parts. Now that is all that I am refusing to disclose.

The Commissioner: You do not state who it is.

The Witness: That comes as a part of the conversation.

The Commissioner: No; you are mistaken in the law, Mr. Fallon.

The Witness: May we go right before Judge Hand on that proposition?

Mr. Myers: We are not going over every five minutes. We will make our motion after we make our record.

The Witness: You have it clearly on the record that I refuse to answer that question, because it is a part of that conversation, and because that conversation in its entirety was privileged. Now then, having taken that stand—

Q. (Interrupting.) You said you refused to answer the question.
A. Having taken that stand—

Mr. Myers (interrupting): Don't take any remarks on the record, playing to the gallery. Just answer the questions.

The Witness: I object to that statement.

The Commissioner: Mr. Fallon, put your objection on the record; do not argue about it at all; you are wasting time.

Q. Now please state with whom you talked last Sunday or Monday about this case.

A. The only thing I know about who it was, is that which he told me in that conversation, and as that conversation is confidential, I will not disclose it.

The Commissioner: State the person with whom you had the conversation. That brings the question up. Do you decline to answer, or not, as to who it was?

The Witness: With all due deference to your Honor's stand, I take the position that this is information that I got only because of that conversation, and I won't disclose the conversation unless the Judge says I ought to.

Q. Was that conversation with the bankrupt?

A. I told you before it was not.

Q. Was it with Nicholas Arnstein?

A. With whom?

Q. Nicholas Arnstein?

A. Is that not the bankrupt?

Q. I am asking you.

A. I just said no.

Q. Was it with Ed. Strong?

A. I do not think I know Ed. Strong.

1374 Q. Was it with Samuel Ginsberg?

A. Oh, wait a minute. Is he a lawyer in Cleveland?

Q. Yes.

A. I have met him. It was not with Ed. Strong.

Q. Was it with Samuel Ginsberg?

A. It was not.

Q. Was it with Nick Cohen?

A. It was not; I never saw the man in my life, or heard from him.

Q. Was it with Fred Jackson?

A. It was not.

Q. Was it with your partner?

A. Mr. McGee?

Q. Yes.

A. No.

Q. Was it in Cleveland?

A. Was I in Cleveland?

Q. No; was the conversation with some one in Cleveland?

A. I don't know; I said I was only in New York.

Q. And you do not know whether you were talking over the Long Distance telephone or not?

A. I guess I was; but I do not know.

Q. You only guess?

A. Well, I think I was; I do not know.

Q. But you are not sure?

A. I am not sure.

Q. And the party was calling you at your home in Mamaroneck?

A. Yes sir.

Q. And you say here you do not know whether that party was talking with you over Long Distance phone or not?

A. I do not know.

Q. Now, did you have any talk with this, or any other party, about this case at any time during the past two weeks?

A. Talks with whom?

Q. Whom did you talk with about this case last Sunday, outside of this party about whom you have just testified?

A. Mr. McGee.

1375 Q. Anyone else?

A. No one else.

Q. Whom did you talk with about this case last Monday?

A. Well, if Mr. McGee had not started for Cleveland up to that time, I think I talked with him; but I am not sure about just when he started for Cleveland.

Q. Anybody else?

A. Nobody else.

Q. Whom did you talk about this case with last Tuesday?

A. I talked with no one else besides Mr. McGee; I think he was back on Tuesday or Wednesday.

Q. Whom did you talk with about this case on Wednesday?

A. I talked with Mr. McGee.

Q. Whom did you talk with about this case on Thursday?

A. No; I think on Wednesday I talked to the bankrupt's wife; I am not quite positive about these dates; but it was in the early part of the week.

Q. And whom did you talk with about this case on last Friday?

A. Nobody.

Q. Or today?

A. Nobody. I just talked to the reporters.

Q. So that we have the record straight, since last Saturday you have not talked with any one about this case, except the party with whom you spoke on the phone, as you have just testified, and except that you have been talking with your partner, Mr. McGee about the case, and except one day this week you spoke to the bankrupt's wife?

A. I saw her twice on that same day; once at night and once in the afternoon.

Q. Now, did you talk with any one——

1376 A. (Interrupting.) And of course I talked with Mr. Do-
ling and the people connected with the authorities about this case, if you want to go into that.

Q. No. Prior to Saturday did you talk with anyone about this case, at any time or any place?

A. You mean prior to last Saturday?

Q. Yes.

A. No, I did not.

Q. Your entrance into this case was last Saturday or Sunday; is that right?

A. It was not Saturday; it was Sunday, as I recall it.

Q. The first you knew about this case was this party calling you on the phone?

A. I knew all about the case.

Q. I mean the first you knew about your being called into the case?

A. That is all. I have known all about this case; I represented Sullivan.

Q. Have you been to Cleveland at any time during the past two weeks?

A. I do not think I was ever in Cleveland in my life.

Q. Have you been out of New York at any time during the past two weeks?

A. I live in Mamaroneck.

Q. Outside of New York State?

A. No—in two weeks? Well, I was at Washington just two weeks ago to-day, I think, or maybe a week or two weeks. It was since the Fritz case started.

Q. Did you meet the bankrupt there?

A. I did not.

Q. Did you talk with anyone in Washington about this case?

A. I did not.

Q. Or about the affairs of the bankrupt?

A. I did not. I paid a social visit to a Major Griffin.

Q. Did you receive any other telephone messages from anyone about this case during the past two weeks?

A. No, I do not think I did.

Q. Did you telephone to anyone during the past two weeks about this case?

A. No; I surely did not.

Q. Did you write any letters to anyone during the past two weeks about this case?

A. Hardly.

Q. Or did you receive any letters from anyone during the past two weeks about this case?

A. I did not.

Q. Did you receive any money from the bankrupt?

A. I did not.

Q. Did you receive any promise of any money from the bankrupt?

A. I did not.

Q. Did you receive any money from anyone else for or on behalf of the bankrupt in this proceeding?

A. I did not. Of course, I expect to be paid.

Q. Well, have you any promise from anyone other than the bankrupt for your compensation in this proceeding?

A. No sir.

Q. Have you any arrangement of any nature, kind or description with anyone about your compensation in this proceeding?

A. Well, that part of the conversation is confidential. I will say no more about it. I will be paid, of course, for my work.

Q. And that conversation was with the bankrupt?

A. I said it was not.

Mr. Myers: I will ask that the witness be directed, your Honor, to answer that question.

The Commissioner: Answer the question.

The Witness: Answer what? What is the question? "That conversation of course was with the bankrupt?" I said it 1378 was not with the bankrupt.

Q. Therefore you are required to answer.

A. Required to answer what? If someone for him employed me?

Q. Yes.

A. To divulge that conversation?

The Commissioner: State who it was with.

The Witness: I refuse to state such conversation.

The Commissioner: Not the conversation; state who it was.

The Witness: The only thing I know about the arrangements in this case, are the arrangements with me over the telephone with a gentleman whom I did not know, and the only information I have as to who he is, which may be correct or incorrect, was a part of that conversation all of which brought about my employment in this case, and my entrance into this case, and all of that is confidential, as I understand it, and for that reason I refuse to divulge it.

The Commissioner: Mr. Fallon, just distinguish between the conversation, and who it was with, the individual.

The Witness: It is all one case. The point is, I did not know the man's voice; I had never heard the man talk; he was an absolute stranger to me, and for that reason, until I know more about him or where it came from, that conversation, I am not going to disclose the conversation.

The Commissioner: You are not asked to disclose any conversation; you are asked who the person was.

The Witness: Only from the conversation; I know nobody 1379 other than by the conversation, and I won't disclose the conversation. Who the person is, is a part of the conversation, your Honor; that is the point I am making. Now I may be wrong.

The Commissioner: You are absolutely wrong. You are bound to state who the person may be. As to the contents of the conversation, that is entirely different.

The Witness: I can truthfully answer that I do not know, if you want that answer.

Q. Have you received any property of any nature, kind or description from the bankrupt in this proceeding?

A. No, I have not.

Q. Have you received any property of any nature, kind or description from anyone else for or on behalf of the bankrupt in this proceeding?

A. I have not.

Q. Have you received any property of any kind, nature or description from the bankrupt's wife?

A. I have not.

Q. Do you know where there is any property of any nature, kind or description, which belongs to the bankrupt in this proceeding, or which stands in his name?

A. No sir.

Q. Or which belong to his wife or which stands in her name?

A. No; I know nothing about it.

Q. You do not know anything about any property of the bankrupt?

A. I said I did not.

Q. Of any nature, kind or description?

A. I said I did not.

Q. And you do not know where the bankrupt keeps his bank accounts?

A. I know nothing about it.

1380 Q. And you do not know where he has his safe deposit box?

A. I know nothing about it at all.

Q. And you have never had any bonds or shares of stock or securities of any kind, which were received directly or indirectly from the bankrupt?

A. I said three times I never had any of his property, directly or indirectly, and I do not know where any of it is.

Q. When did you see Mr. Sullivan last?

A. One day at the trial. He came up to look the thing over.

Q. This week?

A. No; I think it was last week. It was not this week.

Q. Did you discuss Arnstein with him?

A. I did not.

Q. It was not Mr. Sullivan who employed you to represent Arnstein?

A. It was not.

Q. Was it a lawyer?

A. I won't answer that.

Q. What?

A. I say all I know about him is that he gave me his name in that conversation. He did not say whether or not he was a lawyer.

Q. And he asked you to represent the bankrupt?

A. I refuse to disclose that conversation.

Q. Well, you were employed by that man to represent Mr. Arnstein?

A. Now I refuse to say that; that is a confidential matter.

The Commissioner: Mr. Myers, have you asked him the question who retained him? Does that appear of record positively there?

Mr. Myers: We will ask it again to make it clear.

Q. Will you please state fully who retained you to represent the bankrupt in this proceeding?

A. My retainer was a result of a conversation, or a part of a conversation, all of which is confidential and privileged.

Q. And it was a conversation with someone other than the bankrupt?

A. I said so three times.

(At the suggestion of Commissioner Gilchrist, Mr. Myers read to the witness the testimony of Mr. McGee before Judge Hand on February 26th, 1920.)

The Witness: I am unwilling to disclose anything of this conversation that I do not have to, other than the result of the conversation, my employment.

Q. Do you know where the bankrupt is now?

A. I have not the least idea.

Q. Has anyone told you where the bankrupt is?

A. No. And I would not let anyone.

Q. How?

A. I would not allow anyone to. I thought you might ask me that.

Q. And you did not want the Court to know?

A. It was not that I did not want the Court to know, but I did not want to be brought here and asked that question until the man has a chance to come here and prepare his bail.

Q. You did not want to come here and give any information that would aid the Court in finding this bankrupt?

A. I am doing my duty to him.

Q. Aren't you impeding justice now in withholding the whereabouts of this bankrupt in this case?

A. No, I am not impeding justice, in this case or in any other case.

Q. Aren't you withholding this bankrupt from the jurisdiction of this Court?

A. On the contrary; I have advised him to come into the jurisdiction of the Court.

Q. When did you advise him that?

A. I have sent out——

1382 Q. To whom?

A. Do you want me to answer, or are you going to interrupt me? I am telling you exactly what it is.

Q. Go right ahead.

A. I have sent out advices to this man no further back than last night, to come into the jurisdiction of this Court; that he has nothing to fear; that he has been guilty of no criminal offence, and if he will only come in here, so that he won't receive the benefit of all this publicity, he will aid his own case.

Q. Now, who did you send out?

A. Mr. McGee, and three Police officers.

Q. Where did you send them?

A. I do not know where they went. I sent him to find the bank-

rupt.

Q. Where?

A. Wherever Mr. McGee knows he is.

Q. Well then, don't you know what McGee knows?

A. No, I do not know what McGee knows.

Q. Well, have you purposely refused to learn what McGee knows?

A. I purposely refused to have anything to do with it until the man is brought back; and I do not want to have anything to do with it until he is brought back.

Q. So you say Mr. McGee knows where he is?

A. I say by this time McGee knows. He did not know when he left me.

Q. And you did not tell him where to go?

A. Of course I did not, if I did not know.

Q. And so far as you know, he did not know where to go?

A. So far as I know, I know he knows where to get in touch with him.

Q. Through some other alleged criminals?

1383 A. You use the word "criminals" very unadvisedly.

The Commissioner: Strike that out.

Q. Through some other persons?

A. Why naturally, through some other persons. I said indirectly; that means through somebody else.

Q. Who are those somebody elses?

A. I do not know. They may even be criminals.

Q. Do you know where Mr. McGee is now?

A. I do not.

Q. Has he left the City?

A. I believe he has.

Q. You do not know in what City he is now?

A. I do not.

Q. He did not tell you?

A. I did not ask him.

Q. And you would not know where to communicate with him?

A. Not in the slightest way.

Q. And you sent him out to bring back the bankrupt?

A. I told him to get in touch directly or indirectly with this man, as best he could, and endeavor to prevail upon him to come back to New York. And if he can do it, he will bring the man back.

Q. I would like to make this clear, Mr. Fallon: That you would not know where to communicate with the bankrupt now?

A. I said that.

Q. And you at any time did not know where to communicate with the bankrupt?

A. Which is correct.

Q. And you have not, during the past two weeks, had any com-

munication of any sort, of any nature, kind or description, with the bankrupt?

A. That is true.

Q. Now, you did have communication with other persons during the past two weeks, as to the whereabouts of the bankrupt?

A. I said another person, didn't I?

1384 Q. I beg pardon?

A. I said another person, did I not?

Q. (Question read.)

A. I had a single conversation relative to the man, over the telephone.

Q. During the past two weeks?

A. Exactly so.

Q. Do you know anything about the bank account of the bankrupt in the Pacific Bank?

A. I told you I knew nothing of his assets or his accounts, or any of his affairs.

Q. Were you ever consulted by the bankrupt or by his wife about the bankrupt's account in the Pacific Bank?

A. I was never consulted. On the evening that I met his wife, something was said by Mr. Grossman to me about that account, and I do not even recall what it was. I remember the Pacific Bank, because I once had some dealings with them.

Q. Then there were three persons present at that conversation?

A. Five or six.

Q. Moses Grossman?

A. Moe Grossman.

Q. And Fannie Brice?

A. His assistant; Mr. McGee; myself; and some other lady.

Q. Who is the other lady?

A. I do not know her name. A friend of Mrs. Arnold's.

Q. I beg pardon?

A. Some friend of Mrs. Arnold's I do not know her name.

Q. An actress?

A. There is nothing about anyone's appearance that indicates to me that she is or she is not an actress.

Q. You did not know her name?

A. I did not.

Q. Where was this; in your office?

A. No; this was in Mr. Grossman's office.

1385 Q. 115 Broadway?

A. No; the Times Square office.

Q. That was Tuesday evening?

A. Well, it was Tuesday or Wednesday; I would not be positive about that; I would not be sure about the day. I saw her one night and one day.

Q. Do you know William Sherer, S-h-e-r-e-r?

A. I have never heard of the man.

Q. Do you know Herbert Weil?

A. No, I do not know.

(At this time counsel, the witness, and the stenographer appeared before Judge Augustus N. Hand in his Chambers in the Woolworth Building.)

Mr. Myers and Mr. Fallon made statements to the Court, after which the examination of Mr. Fallon was continued as follows; in the presence of the Court:

Examined by Mr. Myers:

Q. Will you please state, Mr. Fallon with whom you talked over the telephone last Saturday or Sunday, whichever day you say it was?

A. I do not know the man.

Q. Will you please state what he said to you?

A. I refuse to state what he said to me.

The Court: Will you state who he said he was?

The Witness: He said to me that he was a friend of the bankrupt, or, as I think he expressed it, he said "Arnold"; and that his name was Allen. I said I never heard of a Mr. Allen in connection with this case; I did not know a Mr. Allen.

Q. And you did not speak with the bankrupt at all?

A. I told you several times I never talked to the bankrupt.

Q. And you have had no further communication with this 1386 man who said he was Allen?

A. In accordance with that conversation, which I do not want to disclose, but will go this far with you, to say that as a result of that, I sent Mr. McGee to Cleveland, and he, as I understand it, saw Arnold himself.

Q. Was the conversation with that man, in Cleveland, that you had?

A. I do not know, Mr. Myers. My impression is——

Q. (Interrupting.) When the man called up did he say "I am speaking from Cleveland"?

A. He did not.

Q. Didn't he say "I am speaking on Long Distance"?

A. He did not.

Q. Didn't you know he was speaking on Long Distance?

A. I did not.

The Court: Did he say anything about where he was?

The Witness: No; absolutely nothing.

Q. Didn't the operator say that Cleveland wanted to talk to you?

A. Of course not. I was not the first one on the wire, to commence with.

Q. So far as you know, the person with whom you were speaking was not in Cleveland?

A. I do not know whether he was or was not in Cleveland. I might guess about it.

Q. You have some sort of an arrangement with the District Attorney about the production of this man, haven't you?

A. That is part of my employment, and I won't go into that. The

arrangement I may have with the District Attorney, in this man's behalf, is part of my professional employment.

Q. Didn't you tell the District Attorney that you could
1387 produce this man?

A. I won't answer that.

Q. Well, can you produce this man?

A. I won't answer that. Your Honor may be informed, and if you think I ought to explain these things that I did in an absolutely professional engagement, I will tell what happened. I went to see Mr. Dooling and told Mr. Dooling that I felt that this defendant was hurting his chances for a successful defense by remaining out of the jurisdiction; that I would forward that information to the bankrupt, through my partner, Mr. McGee, and that I thought he could gain nothing by remaining away. That I would also, if possible, get in touch with his wife and advise her, if she knew of any way to forward that same information; or to give Mr. McGee a letter so that Mr. McGee might take the letter to this man, from his wife, urging him to return. Because I am satisfied there is no case against this man, and he has nothing to fear. He has been badly advised by somebody, and if he would come back, he could face this indictment to-morrow without any fear of the consequences at all. But he thinks that if he comes back to New York they will incarcerate him in the Tombs and he will remain there for several months; that he could not get bail, or that they will fix such an excessive bail that he could not get bail; the papers were speaking of \$200,000, and all that sort of nonsense.

Mr. Myers: Well, Mr. Fallon has testified that he does not know where the bankrupt is.

The Witness: I do not know.

Q. And never did know?

A. And made it my business not to find out.

1388 The Court: How would you go to work to find out when he was? You have stated that you——

The Witness (interrupting): I sent Mr. McGee to him.

The Court: Well, in accordance with that, it is fair to conclude, from your statement, that you can communicate with him if you desire.

The Witness: Mr. McGee had a telephone number, which I do not know, and which I purposely avoided finding out, because there was talk about an examination, and all that sort of thing, and I absolutely avoided finding out any of these things for that reason; because I want to be fair to this defendant. And when that information was given to him it was to call up a telephone number at a certain place at a certain time, where he in turn would be informed where somebody else would meet him, who in turn would take him to this man. Now that is all I know about it. I do not know who the men are, or what the number was, or where the number was, or anything else.

By Mr. Zalkin:

Q. Where is Mr. McGee now?

A. Out of town.

Q. In connection with this matter?

A. Sent in accordance with my agreement with Mr. Dooling.

By Mr. Myers:

Q. Will you make your own statement, Mr. Fallon, of your connection with this case, from the beginning, in your own way? You are a lawyer; we do not want to have any misunderstanding with you at all.

A. I understand that. I had that conversation with that man over the telephone on Sunday or Monday; I am not sure about the day. As a result of that conversation, I sent Mr. McGee to 1389 the Winton Hotel at Cleveland; and Mr. McGee, I think at the Winton Hotel, met this bankrupt, in the lobby of that hotel, as I understand it; but I do not know that except as he reported it to me. And as soon as McGee returned I went to the District Attorney's office and asked them if they would not agree to arrange to have the bail matters fixed in advance, so that when this man would be produced, these matters could all be arranged so that there would be no unnecessary delay; which of course would result in his incarceration at that time.

By Mr. Zalkin:

Q. Mr. Fallon, Mr. McGee was not retained in the case, was he?

A. I suppose we were both retained.

Q. You were personally retained?

A. Over the telephone; and he was personally retained by the bankrupt, as I understand it. We were both retained. I was called up for that purpose; now I do not want to go into that part of it; but as I understand it, I was retained, and that undoubtedly was confirmed by the man himself at Cleveland. But when he met the man, of course the preliminary arrangements having been made, they went right on as attorney and client.

Q. Do you know how Mr. McGee obtained the telephone number?

A. No, I do not.

Q. How do you know that he obtained it?

A. I know he had it, because he told Mr. Dooling in my presence last night; and all that I know, Mr. Dooling knows. And we brought in the New York Police and we told them what our information was. And Mr. Dooling agreed that he would send out 1390 these three policemen, who would arrange with Arnold not to place him under arrest or bring him into any jail or to lock him up, or confine him in any way, until he had a chance to walk into Court on Monday morning. And that arrangement was made last night.

The Court: You understand he is coming? You believe he is coming?

The Witness: I absolutely believe he is coming; I do not think that is open to any question at all. I purposely would not find out any more, because I would not want that man to think that I had done something to him wherein I had not treated him fairly; I would not be placed in that position; and that is why I would not have anything to do with it.

Q. If he comes in on Monday morning, will you produce him at 2 o'clock in the afternoon, before Commissioner Gilchrist, for examination?

A. I am not going to make any stipulation about that; you have your right to subpoena him. Of course he will claim his privilege.

By Mr. Myers:

Q. You say he has not committed any crime?

A. Many a man has not, and he has faced an indictment, embarrassed by things he said.

Q. You just told the Judge that he had nothing to fear.

A. I am absolutely positive of that. But do you think I am going to have this man go ahead and make a lot of statements, and be examined, and be embarrassed by the use of those statements later on? I would not do that; of course not. But as I see the man, if he is ready to be examined, I have no reluctance; except that I think it will be bad advice. If they will try this criminal case in a 1391 week or two, you can examine him forever. I think that is fair, don't you, Judge? Not to let this man talk when he is under indictment.

Mr. Myers: I would like to have this clear, your Honor, and Mr. Fallon, before Mr. Fallon goes.

Q. That you do not know anything about any property or assets of the bankrupt, of any nature, kind or description?

A. No, absolutely not.

Q. And never did know?

A. I do not even know the man.

Q. Do you know a lawyer by the name of Hyman Cohen?

A. Where is he?

Q. 220 Broadway; Isidore Cohen; Hyman Cohen.

A. With what concern is he? Alone?

Q. They are lawyers; H. I. & L. Cohen, 220 Broadway.

A. I do not think I ever saw him.

Q. You never knew him.

A. You know, we all know so many lawyers.

Q. Did you ever have any talk at any time during the past few months with any member of that firm, in reference to stocks or bonds?

A. About Arnold?

Q. About anyone, in reference to stocks or bonds?

A. Well now, I don't want to be wrong about that. Give me a little more of it; what is it about? I have no recollection of it.

Q. They are a firm of lawyers by the name of H. I. & L. Cohen.

A. What kind of stocks or bonds?

Q. Any kind of stocks or bonds that were alleged to have been stolen.

A. Are they the attorneys who represented the man who made the charges against Sugarman?

Q. I believe it was in connection with that case.

1392 A. I talked to a lawyer up in the Park Row Building, as I recall, about stocks and bonds. I do not believe the name is Cohen. They were up on the top floor of the building. Are those the fellows?

Q. Do you know any such firm?

A. I might, but I do not think so.

(At the suggestion of the Court, the examination of Mr. Fallon was suspended.)

Signed and sworn to before me this — day of —, 1920.

Special Commissioner.

Adjourned to Monday, March 1st, 1920, at 2 p. m.

1393 UNITED STATES OF AMERICA,
Southern District of New York, ss:

JULES W. ARNDSTEIN, Respondent,

vs.

THOMAS D. MCCARTHY, U. S. Marshal, Southern District of N. Y.

Habeas Corpus.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of part III of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this fourth day of April, in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the said United States the one hundred and forty-six.

[Seal of District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, Jr.,
Clerk.

1394 District Court of the United States for the Southern District
of New York.

No. 27525.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Order to Show Cause to Punish for Contempt.

On reading and filing the annexed affidavits of Saul S. Myers and of Joseph K. Guerin, each sworn to June 1, 1920, and

On reading the following papers on file herein in the office of the Clerk of this Court, to wit, the Petition for the involuntary bankruptcy of the said Arnstein, the order of adjudicating the said Arnstein a bankrupt, the orders for the examination, under Sect. 21 A of the Bankruptcy Act, of the said Arnstein and witnesses, the testimony of the said Arnstein given pursuant to such orders and the certificates of the Special Commissioners.

And on motion of Saul S. Myers, Attorney for the said Trustee.

I do hereby order the said Arnstein to show cause at a Stated Term of this Court for the hearing of litigated motions in bankruptcy, to be held at the United States Court and Post Office Building in the Borough of Manhattan, in the City of New York, on June 7, 1920, at the opening of court on that day or as soon thereafter as counsel can be heard why the following relief should not be granted herein, to wit:

1395 (a) Why the said Arnstein should not be punished for contempt of court for his refusal to answer the questions put to him on such examination before Alexander Gilchrist, Jr., Esq., and William Tallman, Esq., Special Commissioners, which the said Commissioners directed the Bankrupt to answer and which he refused to answer, which questions are set forth in Schedule A of the said annexed affidavit of the said Saul S. Myers.

(b) Why the said Arnstein should not be punished for contempt of court for his refusal to answer the questions which the said Commissioners asked him on such examinations, which questions are set forth in Schedule B of the said annexed affidavit of the said Saul S. Myers.

(c) Why the said Arnstein should not be punished for contempt of court for his refusal to answer questions put to him by counsel for the said Trustee, which the said Arnstein refused to answer on the ground that the answers might tend to incriminate or degrade him, which questions are set forth in Schedule C of the said annexed affidavit of the said Saul S. Myers.

(d) Why the said Commissioners should not be instructed to require answers from the said Arnstein to questions put to him by counsel for the said Trustee to which the said Arnstein objected on

the ground that the answer might tend to incriminate him, which objections the said Commissioners sustained to which exception was taken by the said Trustee, which questions are set forth in Schedule D of the said annexed affidavit of the said Saul S. Myers.

(e) Why the said Commissioners should not be instructed
1396 to require answers from the said Arnstein to questions put to him by counsel for the said Trustee to which the said Arnstein objected on the ground that the answers might tend to incriminate him, which objections the Commissioners sustained and refused to instruct the witness to answer to which ruling and refusal the said Trustee excepted, which questions are set forth in Schedule E of the said annexed affidavit of the said Saul S. Myers.

(f) Why the said Arnstein should not be required to forthwith turn over to the said Trustee the proceeds of the securities more fully set forth in the annexed affidavit of the said Saul S. Myers, which securities Joseph Gluck testified before the said Commissioners he delivered to the said Arnstein and to one Nick Cohn, which securities it is claimed belong to the said Trustee, and why the said Arnstein should not be directed to turn over to the said Trustee the sum of Five hundred dollars (\$500), which he testified before the said Commissioners he received from his wife on or about February 12th, 1920, and for the disposition of which he has failed to account and why upon his failure to turn over such securities and the said sum of Five hundred dollars (\$500) he should not be punished for contempt of court.

(g) Why the said Arnstein should not be punished for contempt of court for failure to file schedules of his assets and liabilities herein.

Why such other and further relief should not be granted as to the Court may seem proper.

1397 I do further order that this order to show cause and the annexed papers may be served on or before June 3, 1920, and that such service be sufficient, and that any answering affidavits must be filed and served on the attorney for the said Trustee on or before June 4, 1920, and

I do further order that the said Arnstein forthwith deliver to the said Trustee all property, assets and effects of whatsoever nature and wheresoever located, including accounts, notes and bills receivable, drafts, checks, moneys, certificates of stock, bonds, securities and all other choses in action, account books, records, chattels, lands and buildings, life and fire and all other insurance policies in his possession or under his control, and I do hereby enjoin and restrain the said Arnstein from disposing of or interfering with any of the property of the estate herein.

Dated at the Post Office Building, in the Borough of Manhattan, in the City of New York, June 1st, 1920.

AUGUSTUS N. HAND,
U. S. D. J.

1398 District Court of the United States, Southern District of New York.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Affidavit of Saul S. Myers.

UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, ss:

Saul S. Myers, being duly sworn, deposes and says:

1. I am the attorney in this proceeding for Hon. Henry A. Gildersleeve, Trustee in Bankruptcy herein. I also represent the American Surety Company, the National Surety Company, the Lloyds of England and other creditors herein.

2. I have been conducting certain examinations herein under Sect. 21-A of the Bankruptcy Act and among the various witnesses examined was one Joseph Gluck. Gluck was examined on several different days. He was recalled on the afternoon of April 30th last and was shown a list of securities which the various Surety Companies and Stock Exchange houses claim had been lost. Gluck examined the list and gave a detailed account of the securities which came into his possession and gave the name of the persons to whom he gave those securities.

3. Gluck testified that the following is a true and correct
1399 list of the securities which, according to the best of his recollection, he had given to the Bankrupt and to Nick Cohen at one and the same time.

Stocks.

No. of
shares.

Name.

100.

American Beet Sugar.

The testimony of Joseph Gluck on that point is as follows:

"A. I turned that over to Nick Cohen. Nick Arnstein was there at the time.

* * * * *

Q. No one was present except Cohen and Arnstein?

A. No, sir.

Q. At no time; is that right?

A. That is right.

* * * * *

Q. * * * Now, the 100 American Beet Sugar you gave it to Nick Cohen?

A. Yes, sir, Cohen and Arnstein."

No. of
shares.

Name.

100.

American Car Foundry.

The testimony of Joseph Gluck on that point is as follows:

"Q. Now, take up No. 4.

A. American Car Foundry.

Q. How many?

A. 100 shares. * * * That was given to Nick Cohen.

Q. All right; who else was present?

A. Nick Arnstein.

Q. Let me ask you here, was Nick Arnstein present every time?

A. Every time I turned over certificates.

Q. You have identified these parties from their photographs in this court, have you?

A. Positively; yes sir."

1400

100.

American Smelting & Refining Preferred.

American Smelting & Refining Common.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 12?

A. American Smelting & Refining.

Q. How many?

A. 100 shares of common and 100 shares preferred.

* * * These went to Nick Cohen in the presence of Nick Arnstein.

* * * * *

Q. You gave those to Nick Cohen and Nick Arnstein?

A. Yes sir.

No. of
shares.

Name.

500.

Atlantic Gulf & West Indies.

The testimony of Joseph Gluck on that point is as follows:

"A. They were given to Nick Cohen in around the month of October.

Q. Where?

A. In Pennsylvania Station.

Q. New York?

A. New York.

Q. 33rd Street?

A. 33rd Street.

Q. Who else was present?

A. Nick Arnstein, in the stateroom.

Q. Arnstein was always present?

A. Always present.

Q. He always saw you hand over those certificates to Nick Cohen?

A. Yes sir.

Q. But you never handed them personally to Arnstein?

A. Let me get this straight. I handed them over to him, (Arnstein) and then he put them in the grip, see?

* * * * *

Q. This was in New York City?

A. This was in New York City; Pennsylvania Station.

Q. Can you give us the date?

A. October 16th I think. That was the first trip to Washington—or October 13th.

1401

Q. What time?

A. 12 o'clock; 12.15 a. m. train.

Q. That would be 12.15 a. m. on the 14th?

A. Yes sir.

Q. Past midnight?

A. Yes sir.

Q. Now, you say that those were the only three persons present; you, Nick Cohen and Nick Arnstein; is that right?

A. Yes sir.

Q. And Nick Arnstein actually had those 500 shares in his hand; is that right?

A. Yes sir."

No. of
shares.

Name.

70. Baldwin Locomotive.

The testimony of Joseph Gluck on that point is as follows:

"Q. Who got those 70 shares?

A. Nick Cohen and Nick Arnstein."

10. Commonwealth Petroleum Common.

The testimony of Joseph Gluck on that point is as follows:

Q. No. 35?

A. 10 shares of Commonwealth Petroleum common. That is familiar to me. I am pretty certain I gave that to Nick Cohen.

200. Crucible Steel Common.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 38?

A. 200 shares of Crucible Steel common. I delivered it to Nick Cohen in the presence of Nick Arnstein."

200. Denver & Rio Grande Railroad Preferred.

The testimony of Joseph Gluck on that point is as follows:

1402

"Q. No. 41?

A. Denver & Rio Grande Railroad Co. preferred.

Q. How many?

A. There are 300 shares down here. I only know of 200 shares delivered by me to Nick Cohen and Arnstein."

100. Endicott-Johnson Company.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 43?

A. 100 shares of Endicott-Johnson Co. delivered to Nick Cohen in the presence of Arnstein."

300. B. F. Goodrich Company.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 46?

A. 300 shares of B. F. Goodrich Co. I don't know if I gave him two or 300 shares. But I gave it to Nick Cohen. I don't remember who I got that from, either. I gave 2 or 300 down here, but I only can remember 200. But it might have been 300."

No. of
shares.

Name.

100.

Guffey, Gillespie Oil Co.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 49?

A. 100 shares of Guffey, Gillespie Oil Co. given to Nick Cohen in the presence of Arnstein."

100.

International Mercantile Marine Preferred.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 55?

A. International Mercantile Marine preferred; 100 shares. I think that was given to Nick Cohen in the presence of Arnstein."

1403

400.

Mexican Petroleum.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 66?

A. 100 shares of Mexican Petroleum. That was given by me to Nick Cohen in the presence of Nick Arnstein. I only gave them 100 shares. There is 300 down here.

Q. Then you must have given him 300?

A. I gave him 400 shares of that. He has only got 300 down. I gave Nick Cohen 400 shares of Mex. Pet."

200.

Ohio City Gas Company.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 73?

A. 200 shares of Ohio City Gas Co. delivered to Nick Cohen in the presence of Arnstein."

320.

Pennsylvania R. R.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 74?

A. 320 shares of Pennsylvania Railroad. 300 shares was given to Nick Cohen in the presence of Arnstein."

100.

Pond Creek.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 76?

A. 100 shares of Pond Creek given to Nick Cohen in the presence of Arnstein."

No. of
shares.

Name.

Republic Iron & Steel Co.

100.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 82?

A. 100 shares of Republic Iron & Steel Co. That was delivered to Nick Cohen."

1404

50.

Reynolds Tobacco Company.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 84?

A. 50 shares of Reynolds Tobacco Co. That was delivered to Nick Cohen in the presence of Arnstein.

200.

St. Louis & San Francisco R. R.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 95?

A. 400 shares of St. Louis & San Francisco Rail. I know of 300 shares.

Q. Who did you give the 300 shares to?

A. Nick Cohen, in the presence of Arnstein.

Q. What became of the other 100?

A. I don't know."

100.

Studebaker, Inc., Common.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 97?

A. 300 shares of Studebaker, Inc. common. He has got down 100. I don't know whether it is 100 or 300—it is 100 shares of Studebaker.

Q. You gave the 100 shares to Nick Cohen?

A. Yes sir.

Q. The other 200, what about them?

A. I don't know. Only, if it is in the same delivery, it is the same thing. I can't state."

200.

Texas Company Preferred.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 100?

A. 200 shares of Texas Company preferred. They were 100 each; 200 shares. I gave those to Nick Cohen in the presence of Nick Arnstein."

1405

No. of
shares.

Name.

600.

Union Pacific.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 101?

A. 600 shares of Union Pacific. I know of 500 shares of that. That was given to Nick Cohen and Nick Arnstein.

Q. And the other 100 shares?

A. I don't know anything about that. * * * I wish to correct my testimony and say that in reference to No. 101, there is 600 shares of Union Pacific, instead of 500 which I gave to Nick Cohen."

100.

United Retail Stores, Inc. Common.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 103?

A. 100 shares of United Retail Stores, Inc. common. I know of a temporary certificate; that is the one. That was given to Nick Cohen and Nick Arnstein.

Q. That is 100 shares?

A. Yes sir.

Q. Where did that come from?

A. That came from Bamberger, Loeb & Co."

100.

Wheeling & Lake Erie.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 108?

A. 100 shares of Wheeling & Lake Erie, given to Nick Cohen and Arnstein.

100.

Worthington Pump.

The testimony of Joseph Gluck on that point is as follows:

1406

"Q. No. 110?

A. 100 shares of Worthington Pump. That was given to Nick Cohen and Nick Arnstein. And there is 15 more I don't know anything about.

Q. What became of the 100 shares?

A. They were given to Nick Cohen and Nick Arnstein. There is 15 other shares that I don't know anything about. That is 115 all together."

Bonds.

Amount.	Name.	Value.
2.	Iowa Central Railroad Co.	.....

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 130?

A. 2 Iowa Central Railroad Co. bonds. 2 bonds, they are register-; 1,000 dollar bonds. They were given to Nick Cohen and Nick Arnstein.

Q. They have been located?

A. 2 registered bonds. Were they registered; two names on?

Q. Yes.

A. Those were the only two registered bonds. That leads us up to—if that was located, there is a lot of bonds that were delivered to a man in the hospital; at the Post Graduate Hospital, on the second floor. I don't know his name; A Jewish name.

Q. Mortis?

A. No. It is something with a 'stein' on the end of it. I can't remember the name. I wasn't up to see him.

Q. Tell us that, because that is very important now. Tell us all about that.

A. Yes, I will tell you; When he was up there in the hospital sick—

Q. (Interrupting.) When was that?

A. That was around October—around September; in the month of September, he was sick; he was on the second floor, his room was a private room.

Q. What was the matter with him?

A. That I can't state. * * * I can't give you the exact date; but you can look it up. I don't know if that will give you any help, the date that he got those bonds. He was sick; Nick Cohen called up, on

14th Street; he called up Long Distance and got Bridgeport;"

Amount.	Name.	Value.
\$1,000.	Wilson & Company.	.....

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 158?

A. Wilson & Co.; 1 1928—no; there is two different maturity dates. One Wilson & Co. bond was given to Nick Cohen. I don't know which maturity date; 1928 or 1929. That was a 1,000 dollar bond; that was given to Nick Cohen and Arnstein.

4. Joseph Gluck testified that he first met Nick Cohen in September, 1919, through one Stahl; that Cohen subsequently introduced him to Arnstein; that the three of them planned to take the securities to Washington, Philadelphia, Boston and Baltimore, and dispose of them, and the three of them, that is to say: Gluck, Arnstein, and Cohen, made trips to those cities and disposed of those securities and Joseph Gluck was paid a portion of the proceeds, not only by Cohen but also by Arnstein. Joseph Gluck testified that these trips were during the months of October and November 1919.

5. The testimony of the bankrupt herein shows that he left this city on or about February 12th last and did not return until May 15th last. Immediately upon his return he was examined before Mr. Gilchrist and was shown by me the same list of securities which was shown to the said Gluck, and he was asked by me to state whether he had any of those securities in his possession or under his control, or whether he did have them in his possession or under his control at any time, and he declined to answer on the ground that the answers might tend to incriminate or degrade him. The 1408 testimony on that point is as follows:

"Q. I show you a list of securities and ask you whether you had any of these securities in your possession or under your control? (Handing witness.)

A. I can't answer for the same reason.

Q. Will you look at it, you cannot answer until you look at it.

The Commissioner: Use some judgment.

The Witness: I cannot answer for the same reason, it may incriminate me.

List marked Exhibit 1 for identification of this date."

6. Schedule A hereto annexed is a list of questions which the Commissioner directed the bankrupt to answer and which he refused to answer. Schedule B hereto annexed is a list of questions which the Commissioner asked of the witness which the bankrupt refused to answer. Schedule C hereto annexed is a list of questions put by counsel for the Trustee which the bankrupt refused to answer on the ground that the answer might tend to incriminate or degrade

him. Schedule D hereto annexed is a list of questions put to the bankrupt by counsel for the Trustee to which the bankrupt objected on the ground that the answers might tend to incriminate him which objection the Commissioner sustained to which exception was taken by the Trustee. Schedule E annexed hereto is a list of questions put to the bankrupt by counsel for the Trustee to which the bankrupt objected on the ground that the answer might tend to incriminate him, which objection the Commissioner sustained and refused to instruct the witness to answer, to which refusal the Trustee excepted.

SAUL S. MYERS.

Sworn to before me this 1st day of June 1920.

A. MALES,
Notary Public, Co. Clerk's No. 65.

BRONX Co. Reg. No. 2161 N. Y.
Co. Clerk's No. —.

1400

SCHEDULE A.

This is a schedule of questions which the Commissioner directed the Bankrupt to answer and which he refused to answer:

	Page.
1. Where you spent it? (Referring to the sum of \$500 which the Bankrupt testified he had when he left New York in February last)	2330
2. You have the knowledge? (Referring to the place where the Bankrupt spent the sum of \$500 which he testified he had when he left New York in February last)	2330
3. You refuse to answer the question whether or not you have the knowledge where you spent it?	2331
4. What property had you which you referred to the other day, some seven months prior to the commencement of the proceeding in bankruptcy?	2334
5. Were you in October 1919, in the possession of any property?	2338
6. Have you had any property besides the \$500 you mentioned, within the last seven months preceding the petition in bankruptcy?	2345
7. Aside from the \$500 you spoke of, have you had any money or property in your possession, or held by you, since the filing of the bankrupt petition?	2351
1410	
8. Did you instruct Messrs. Fallon & McGee to appear for you in this bankruptcy proceeding?	2353
9. Did you at any time during the past six months hear any conversation between Joe Gluck and Nick Cohen?	2382

Arnstein's Testimony.

	<i>Page.</i>
10. What city did you get the machine? (Referring to the automobile in which the Bankrupt returned to New York City after being away since Lincoln's Birthday, 1920)	69
11. Will you say where you were yesterday?.....	72
12. Do you know Randolph Newman, the lawyer?.....	76
13. Do you know Nick Cohen?.....	2157
14. Have you ever had any business transactions with him of any nature, kind or description? (Referring to Nick Cohen).....	2104
15. How much money have you in your possession or under your control?	2180

1411

SCHEDULE B.

This is a schedule of questions which the Commissioner asked the Bankrupt and which he refused to answer:

Arnstein's Testimony.

1. Have you had any business relations with them, Mr. Arndstein, or with any one of the persons that Mr. Myers has questioned you about?.....	29
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1412

SCHEDULE C.

This is a schedule of questions put by counsel for the Trustee which the Bankrupt refused to answer on the ground that the answer might tend to incriminate or degrade him:

Arnstein's Testimony.

	<i>Page.</i>
1. Will you state to the Court where you went first, just before Lincoln's Birthday of this year?.....	8
2. Where did you come from?.....	9
3. Where did you go first when you got in New York State?	9
4. Well, where did you go?.....	9
5. Will you say where you were yesterday?.....	9
6. Have you received any communication from your wife since Lincoln's Birthday, either directly or indirectly?	22
7. When did you see Joe Gluck last?.....	26
8. Do you say whether you know him or not?.....	26
9. Do you know Irving Gluck?.....	27
10. Do you know Rudolph Bunora?.....	27
11. Do you know Herbert Bunora?.....	27

12. Do you know Murray Fox?.....	27
13. Do you know James Kean?.....	27
14. Do you know David Haines?.....	27
15. Do you know Ed Furey?.....	27

1413

16. Do you know David Sullivan?.....	27
17. Do you know Norman S. Bowles?.....	27
18. Do you know W. W. Easterday?.....	27
19. Well, do you know Hartford Jimmy?.....	27
20. Do you know Al Hunter?.....	28
21. Do you know Billy King?.....	28
22. Do you know Phil. Kastel?.....	28
23. Do you know Nick Cohen?.....	28
24. Do you know Charlie Druckker.....	28
25. Do you know Eddie Winkler?.....	28
26. Do you know Arthur Ecremont?.....	28
27. Did you ever know Mortimer Bernstein?.....	29
28. Do you know Louis Bleet?.....	30
29. Do you know Cheeks Ginsberg?.....	30
30. Do you know anyone in Cleveland?.....	30
31. Do you know Samuel T. Haas?.....	30
32. Do you know Joseph Klein?.....	30
33. Do you know Don Lloyd?.....	30
34. Do you know Dan Lloyd?.....	30
35. Do you know Joe Marino?.....	30
36. Do you know George Hackett?.....	31
37. Do you know Sam Gireau?.....	31
38. Do you know Michael Radice?.....	31
39. Don't you know this man? (Showing witness photograph, Exhibit 6 for identification of April 28th, 1920)	31

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40. You won't say whether you know that man or not?...	31
41. Do you know this man? (Showing witness photograph, Exhibit 5 for identification of April 28th, 1920)...	31
42. Do you know this man? (Showing witness photograph, Exhibit 10 for identification, of April 28th, 1920)...	32
43. Do you know this man? (Showing witness photograph, Exhibit 7 for identification of April 28th, 1920)...	32
44. Do you know this man? (Showing witness another photograph)	32
45. Do you know Mattie Pandolfi?.....	32
46. Do you know Joe Peppe?.....	32
47. Do you know Jimmy Ryan?.....	32
48. Do you know E. P. Strong?.....	33
49. Do you know Frank Thompson?.....	33

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50. I show you a list of securities and ask you whether you ever had any of these securities in your possession or under your control? (Showing witness a list marked for identification of May 15th, 1920).....	33
51. Did you ever see any stocks or bonds during the past year, anywhere?	35
1415	
52. Did you touch any stocks or bonds any time, or place, within the past year?.....	35
53. Did you buy or sell any shares of stock or bonds at any time during the past year?.....	35
54. Do you say that you never had in your possession or under your control, a single share of stock or bond mentioned in this list Exhibit 1 for identification of this date?	36
55. Well, do you say that you never saw those securities?..	36
56. You say you never touched them?.....	36
57. Did you ever see them in anyone else's possession?....	36
58. Did you ever go to Washington with Nick Cohen?....	38
59. Did you ever meet Nick Cohen in Washington?.....	38
60. Have you invested any money anywhere in the past year?	39
61. Have you handled any moneys since Lincoln's Birthday this year?	39
62. Have you had any property in your possession anywhere since Washington's Birthday this year?.....	39
1416	
63. Where have you been living?.....	42
64. State them? (Referring to 'various places' where Arndstein said he had been.).....	43
65. Will you state where you were this morning, before you went to Court?	51
66. Will you state your movements from the time you arrived in New York City this morning?.....	51
67. Will you state with whom you spoke in New York to-day?	52
68. Where did you get into that first automobile?.....	71
69. Where did you go to when you left New York February 10th or 11th this year?	73
70. Where have you been since February 10th of this year?	73
71. In how many different cities have you been since the 10th of February this year?.....	73
72. What persons did you talk with since the 10th of February this year?	73
73. What banks, trust companies, safe deposit companies, or brokers have you visited since the 10th of February this year?	74

74. How often have you seen Nick Cohen since the 10th of February this year? 74
75. How often have you seen Phil Kastel since the 10th of February this year? 74

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76. How often have you seen Charles Druckker since the 10th of February this year?..... 74
77. How often have you seen Ed Strong since the 10th of February this year?..... 74
78. Did you telephone to anyone to-day?..... 74
79. Did you telephone to anyone yesterday?..... 75
80. Have you made any statement about your affairs to anyone in the past six months?..... 75
81. Have you authorized any such statement?..... 75
82. Do you know any brokers in New York City?..... 75
83. Have you ever authorized anybody to buy or sell any shares of stock for you?..... 75
84. Have you ever authorized anybody to buy or sell any bonds for you? 75
85. Have you ever borrowed any money in the past year?... 75
86. Have you loaned any money in the past year?..... 75
87. Have you handled any money or any property of any nature, kind or description, in the last six months, excepting the \$500. which you have testified you received from your wife in February of this year, just before — left New York?..... 75
88. Did you meet the Gondorfs at Atlantic City?..... 76
89. Did you visit them in Atlantic City?..... 76
90. Do you know O'Brien, the clerk at the Hotel Claridge?. 77
91. Do you know Mr. Washer, who has a cafe at 86th Street & Broadway? 77

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92. What other source? (Referring to the source from which the Bankrupt received the information that his return to the City was being obstructed)..... 83
93. Where have you been since the time of the filing of the petition in bankruptcy in this case?..... 2156

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SCHEDULE D.

This is a schedule of questions put to the Bankrupt by counsel for the Trustee to which the Bankrupt objected on the ground that the answer might tend to incriminate him, which objection the Commissioner sustained, to which exception was taken by Counsel for the Trustee.

Arnstein's Testimony.

	Page.
1. What other names? (Referring to the fact that the Bankrupt has been known under various names)...	2
2. By what other names have you been known besides Jules Arndstein?	2153
3. Where did you go on February 10th of this year?.....	2155
4. Do you refuse to answer?	2155
5. On the ground that the answer might tend to incriminate you?	2155
6. In reference to the possible violation of a Federal Statute?	2155
7. Now, what Federal Statute do you claim that you might possibly be indicted for violating?.....	2155
8. How long have you known Nick Cohen?.....	2160
1420	
9. When did you see him last?.....	2161
10. Did you ever receive any property of any kind from Nick Cohen?.....	2161
11. Did you ever give any property of any kind at any time, to Nick Cohen?.....	2161
12. Have you ever had any correspondence with Nick Cohen since February 10th last?.....	2161
13. Did you have any communication of any nature, kind or description with Nick Cohen since February 10th last?	2162
14. Did you ever know? (Referring to where Nick Cohen lived)	2162
15. Where did you see him (Nick Cohen) last; in what city?	2163
16. Will you say whether you saw him this year? (Referring to Nick Cohen.).....	2163
17. Or last year? (Referring to when the witness last saw Nick Cohen.).....	2163
18. Or the year before? (Referring to when the witness last saw Nick Cohen.).....	2163
19. Or the year before that? (Referring to when the witness last saw Nick Cohen.).....	2163
20. Have you seen him during the past five years? (Referring to when the witness last saw Nick Cohen.).....	2163
21. Have you ever been in business with Nick Cohen?....	2164

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22. What have been the nature of your dealings with Nick Cohen? 2166
23. What dealings have you had with Nick Cohen during the past year? 2166
24. Do you remember going to Washington, D. C. with Nick Cohen on or about October 12th last? 2166
25. Do you remember meeting Joe Gluck and going with him at the same time? 2167
26. Do you remember meeting David Sullivan in the Pennsylvania Station at the same time? 2167
27. Do you remember meeting David Sullivan in Washington, D. C. on or about October 13th last? 2167
28. Do you remember receiving a satchel full of stolen securities from Joe Gluck in the Pennsylvania Station on October 12th last? 2167
29. You do not deny that? 2167
30. Do you deny that you and Joe Gluck and Nick Cohen proceeded to Washington on or about October 12th last with a satchel full of stolen securities, to your knowledge? 2167
31. Do you remember receiving some money from Nick Cohen in Washington, D. C. on or about October 13th, last? 2168
32. Did you go to Boston with Joe Gluck and Nick Cohen in October last? 2169
33. Did you go to Baltimore, Maryland with Joe Gluck and Nick Cohen in October last? 2169

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34. Did you go to Philadelphia with Joe Gluck and Nick Cohen in October last? 2169
35. Did you receive any securities of any nature, kind or description from Joe Gluck or Nick Cohen in any of those cities, in October and November last? 2169
36. Whom did you meet in Washington, D. C. in October last? 2169
37. Whom did you meet in Boston in October and November last? 2169
38. Whom did you meet in Philadelphia and Baltimore in October and November last? 2169
39. Whom did you meet in Hoboken, New Jersey, in October and November last? 2169
40. Did you visit any banks, trust companies, or safe deposit companies in October, November or December last, or any time this year? 2170
41. Do you know Joseph Gluck? 2170
42. Do you know Irving Cluck? 2170
43. Do you know Charles Druckker? 2170
44. Do you know Eddie Winkler? 2170

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45. Where did you get the money? (Referring to the money which the bankrupt said he had in his possession and under his control.)	2181
46. When did you get it? (Referring to the money which the bankrupt said he had in his possession and under his control.)	2181
1423	
47. Did you get it this year? (Referring to the money which the bankrupt said he had in his possession and under his control.)	2181
48. Did you receive the money last year? (Referring to the money which the bankrupt said he had in his possession and under his control.)	2183
49. Did you receive it more than two years ago? (Referring to the money which the bankrupt said he had in his possession and under his control.)	2183
50. Did you receive it more than three years ago? (Referring to the money which the bankrupt said he had in his possession and under his control.)	2183
51. Did you get it five years ago? (Referring to the money which the bankrupt said he had in his possession and under his control.)	2184
52. What bank accounts have you had in the past five years?	2188
53. What bank accounts have you had in the past four years?	2188
54. What bank accounts have you had in the past year?...	2188
55. What safe deposit boxes have you had in the past five years?	2189
1424	
56. What business were you in at the time of the filing of the petition in bankruptcy in this proceeding?.....	2189
57. What business interests did you have at the time of the filing of the petition in bankruptcy in this proceeding?	2189
58. What other property? (Referring to the testimony of the bankrupt that since the filing of the petition in bankruptcy in this proceeding he has had a little money from time to time.)	2198
59. How much money have you had since the filing of the petition in bankruptcy in this proceeding?.....	2199
60. Of what did this property consist which you say you had seven months before the filing of the petition in bankruptcy?	2199
61. Have you had any automobiles during the past year?..	2200
62. Have you had any diamonds or jewelry during the past year?	2200
63. Have you had any stocks or bonds during the past year, either in your name or possession or under your control?	2203
64. Have you had access to any safe deposit boxes during the past year?	2203

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65. Have you had any bank accounts anywhere in the United States during the past year?.....	2203
66. Have you had any safe deposit boxes, either in your name or in anyone else's name anywhere in the United States, during the past year?.....	2204
1425	
67. Do you know Joseph Gluck?.....	2204
68. When did you see Joseph Gluck last?.....	2204
69. Have you seen him (Joseph Gluck) at all during the past five year-?.....	2204
70. Have you seen him (Joseph Gluck) at all during the past ten years?.....	2204
71. Have you seen Joseph Gluck during the past year?....	2204
72. Have you seen him (Joseph Gluck) during the past six months?	2205
73. Have you seen him (Joseph Gluck) at any time or any place during the past ten years?.....	2205
74. Did you ever receive any property of any nature, kind or description from Joseph Gluck?.....	2205
75. Do you know Philip Kastel?.....	2205
76. Who is he?.....	2206
77. Do you know where Philip Kastel lives.....	2206
78. When did you see him last? (Philip Kastel).....	2206
79. Where did you see him (Philip Kastel) last?.....	2206
80. How long have you known him (Philip Kastel)?.....	2207
81. Do you know where he (Philip Kastel) is now?.....	2207
1426	
82. Where was he (Philip Kastel) when you saw him last?..	2207
83. Have you been in communication with Philip Kastel during the past year?.....	2207
84. Have you been in communication with Joseph Gluck during the past year?.....	2207
85. Do you know one Ed. Winkler?.....	2207
86. How long have you known Ed. Winkler?.....	2207
87. Do you know where he (Ed. Winkler) is now?.....	2208
88. Do you know where he (Ed. Winkler) lives?.....	2208
89. When did you see him last? (Ed. Winkler).....	2208
90. Did you ever receive any property from him (Ed. Winkler)?	2208
91. Directly or indirectly? (Referring to property claimed to have been received by the Bankrupt from Ed. Winkler)	2208
92. Of any nature, kind or description? (Referring to property claimed to have been received by the Bankrupt from Ed. Winkler).....	2208
93. Have you ever had any communication with him (Ed. Winkler) during the past year?.....	2208
94. Do you know where Nick Cohen is?.....	2208

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95. How long have you known him (Nick Cohen)?.....	2208
96. Do you know his (Nick Cohen) address?.....	2208
97. Do you know where the Court could find him? Nick Cohen)	2209
1427	
98. Do you know where a communication could be delivered to him? (Nick Cohen).....	2209
99. Have you had any communication with him (Nick Cohen) during the past year?.....	2209
100. Did you ever receive any property from him (Nick Cohen) directly or indirectly?.....	2209
101. Do you know Charles Druckker?.....	2209
102. Well, do you know where he lives?.....	2209
103. Can you give a description of him (Charles Druckker). ..	2209
104. When did you see him last? (Charles Druckker)....	2209
105. Where did you see him last? (Charles Druckker)....	2209
106. How long have you known him? (Charles Druckker). ..	2209
107. Did you receive any property from him of any nature, kind or description during the past year?.....	2210
108. Have you ever had any business transactions with Charles Druckker?.....	2210
109. Or with Nick Cohen?.....	2210
110. Or with Edward Winkler?.....	2210
111. Or with Philip Kastel?.....	2210
112. Or with Joseph Gluck?.....	2210
113. Do you know David Sullivan?.....	2210
114. Have you ever had any business dealings with him?... ..	2210
115. Did you ever receive any property from him (David Sullivan)	2210
1428	
116. Did you ever give any property to him? (David Sul- livan)	2210
117. Do you know what city he (David Sullivan) lives in.. ..	2210
118. Will you say when you spoke with him last? (David Sullivan)	2211
119. Do you know John Hogan?.....	2211
120. Do you know where his (John Hogan) office is?.....	2211
121. Did you ever have any business dealings with him (John Hogan).....	2211
122. Did you ever have any communication with him dur- ing the past year? (Referring to John Hogan)....	2211
123. Do you know Murray Fox?.....	2211
124. Do you know where he (Murray Fox) lives?.....	2211
125. Or what his (Murray Fox) business is?.....	2211
126. Did you ever receive any property from him (Murray Fox)	2211
127. Do you know Kenneth Bernard?.....	2211

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128. Did you ever have any business dealings with him? Kenneth Bernard.....	2212
129. Did you ever know Mortimer Bernstein?.....	2212
130. Did you ever have any business dealings with him (Mortimer Bernstein).....	2212
131. Did you ever give him (Mortimer Bernstein) any prop- erty of any nature, kind or description?.....	2212
132. Did you ever receive any property from him (Mortimer Bernstein) of any nature, kind or description?.....	2212
133. How long did you know him before he (Mortimer Bern- stein) died?.....	2212
134. How well did you know him (Mortimer Bernstein)?..	2212
135. Do you know Louis Bleet?.....	2212
136. Do you know where he (Louis Bleet) is now?.....	2212
137. When did you see him (Louis Bleet) last?.....	2212
139. Did you ever receive any property from him (Louis Bleet)?	2213
140. Have you ever given any property to him (Louis Bleet)?	2213
141. Have you ever had any communication with him of any kind during the past year? (Referring to Louis Bleet.)	2213
142. Do you know Norman S. Bowles?.....	2213
143. Did you ever meet him (Norman S. Bowls)?.....	2213
144. Did you ever have any business transaction with him (Norman S. Bowles)?.....	2213
145. Do you own any real estate now?.....	2213
146. Do you know W. W. Easterday?.....	2214
147. Well, did you ever see W. W. Easterday anywhere?..	2214
148. Did you see W. W. Easterday at the Bretton Hall Hotel, New York City, on October 12th last?.....	2214
149. Did you see him there with one Nick Cohen at that time?	2214
1430	
150. Do you know where W. W. Easterday lives?.....	2215
151. Can you describe him (W. W. Easterday)?.....	2215
152. Did you ever receive any property from him (W. W. Easterday)?	2215
153. Did you ever give him any property? (Referring to W. W. Easterday.)	2215
154. Did you ever receive any money from him (W. W. Easterday)?	2215
155. Did you receive any money from him during October, November and December last year? (Referring to receipt of money by the Bankrupt from W. W. East- erday.)	2215
156. Or any time this year? (Referring to receipt of money by the Bankrupt from W. W. Easterday.).....	2215

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157. Well, if you did, will you say what you did with it? (Referring to receipt of money by the bankrupt from W. W. Easterday.)	2215
158. Did you meet W. W. Easterday in Washington last October and November?	2215
159. Did you meet David Sullivan in Washington last October and November?	2216
160. Did you meet Joseph Gluck in Washington last October and November?	2216
161. Did you meet any of those persons in Boston, Philadelphia and Baltimore last October, November and December?	2216
162. Were you ever in the Hotel Touraine last year?	2216
1431	
163. Were you in the Hotel Bellevue-Stratford in Philadelphia last Fall?	2216
164. Were you at the Hotel Belvedere in Baltimore last Fall?	2216
165. Who did you meet in those hotels last Fall?	2216
166. Did you ever register in any hotel outside of New York under any other name than Arnold?	2216
167. Did you ever go under any other name?	2216
168. Have you been out of the United States during the past six months?	2217
169. Have you been out of New York State during the past six months?	2217
170. What cities have you visited during the past six months?	2217
171. With what persons have you talked during the past three months?	2217
172. What banks, trust companies, or safe deposit boxes have you been to in the past three months?	2217
173. Have you been to Cleveland, Ohio?	2217
174. Did you there meet Cheeks Ginsberg?	2217
175. Or Roughy Ginsberg?	2217
176. Or Paddy Goldberg?	2217
177. Or Forrest L. Graves?	2218
178. Or E. P. Strong?	2218
179. Or Dona Arkin?	2218
180. Or Samuel Haas?	2218
1432	
181. Do you know whether this lawyer, Samuel Haas, has been convicted in Cleveland, Ohio?	2218
182. Was he convicted in reference to any transaction which you had with him?	2218
183. Did you ever have any transactions with him?	2218
184. Is E. P. Strong your attorney in Cleveland?	2218
185. Is Samuel Haas an associate of E. P. Strong?	2218
186. Have you ever had any business dealings with E. P. Strong?	2218

187. Did you have a room there? (Referring to the Winton Hotel in Cleveland, Ohio, where the Bankrupt said he was on February 23rd 1920.)	2220
188. Did you meet E. P. Strong in that hotel? (Referring to February 23rd, 1920, at the Winton Hotel in Cleveland, Ohio.)	2221
189. Do you know Nate Cook from Cleveland?	2223
190. Do you know Henry Beckerman of Cleveland?	2223
191. Do you know Samuel Doerfler, D-o-e-r-f-l-e-r, of Cleveland?	2223
192. Do you know Ernest Bernstein of Cleveland?	2223
193. Do you know Aleck Bernstein of Cleveland?	2223
194. Have you ever had any business transactions with any of these persons?	2223
195. Have you ever delivered any securities to any of these persons?	2223
196. Or received any money from them? (Referring to Nate Cook, Henry Beckerman, Samuel Doerfler, Ernest 1433 Bernstein, Aleck Bernstein.) .....	.....
197. Have you at any time during the past six months heard any conversation between Joe Gluck and Nick Cohen?	2224
198. Do you know under what different names Nick Cohen has been known?	2224
199. Do you know whether he (Nick Cohen) is an ex-convict?	2225
200. Do you know whether he is the man who was convicted under the name of Harry Davis and served a term in a Cleveland Penitentiary?	2225
201. Do you know whether he has been known as Mack?	2225
202. Have you been known as George?	2225
203. Do you know Arthur Ecremont?	2225
204. Did you ever have any business dealings with him? (Arthur Ecremont.)	2225
205. Did you ever hand him any securities, directly or indirectly? (Referring to Arthur Ecremont.)	2225
206. Or receive any money from him (Arthur Ecremont) directly or indirectly?	2225
207. Did you meet him (Ecremont) in Chicago recently? ..	2225
208. Did you meet Phil Kastel in Chicago recently?	2226
209. Did you meet Charles Druckker in Chicago recently? ..	2226
1434	
210. Did you meet Ed. Winkler in Chicago recently?	2226
211. Did you ever, in the past three months, hand any one of these persons any securities of any nature, kind or description? (Referring to Kastel, Druckker and Winkler) .....	.....
212. Or receive any money from them? (Referring to Kastel, Druckker and Winkler)	2226

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213. Do you know Ed. Furey?.....	2226
214. Did you ever see Ed. Furey?.....	2226
215. Did you ever have any business dealings of any kind with him (Ed. Furey)?.....	2226
216. Did you ever receive any property from him of any nature, kind or description? (Referring to Ed. Furey) .....	.....
217. Or give him (Ed. Furey any (property)?.....	2226
218. Do you know James Kean of Montreal?.....	2227
219. Or James Kean of Perth, Ontario?.....	2227
220. Did you ever have any dealings with him (James Kean) of any nature, kind or description?.....	2227
221. Do you know Joseph Klein?.....	2227
222. Did you ever have any business dealings with him (Joseph Klein) of any nature, kind or description?....	2227
223. Did you ever give to him (Joseph Klein) or receive from him any property of any nature, kind or description?	2227
1435	
224. Do you know Don Lloyd or Dan Lloyd, either one?...	2227
225. Did you ever have any dealings with either one of these persons? (Referring to Don Lloyd and Dan Lloyd).	2227
226. Did you ever give them (Don Lloyd and Dan Lloyd) any property?	2227
227. Or receive any from them (Don Lloyd and Dan Lloyd)?	2227
228. Do you know Joe Marino?.....	2228
229. Or Sam Gireau?.....	2228
230. Or Michael Radice, R-a-d-i-c-e?.....	2228
231. Or George Hackett?.....	2228
232. Or John Loomis?.....	2228
233. Or Frank Bradford?.....	2228
234. Did you ever have any business dealings with them (Referring to Marino, Gireau, Radice, Hackett, Loomis and Bradford) of any nature, kind or description?..	2228
235. Did you ever give them any property? (Referring to the above named persons).....	2228
236. Or receive any from them? (Referring to the above named persons)	2228
237. Have you had any communication with any of these persons about whom I have asked you, at any time during the past three months?.....	2228
238. Do you know whether Nick Cohen has? (Referring to the fact that the Bankrupt has an account in The Pacific Bank)	2230
1436	
239. Or any of these persons about whom I have questioned you? (Referring to the fact as to whether any of the persons referred to in this testimony had a bank account in The Pacific Bank to the knowledge of the Bankrupt)	2230

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240. Have you any there? (Referring to an account in The Pacific Bank)	2231
241. Have you any safe deposit box there? (Referring to The Pacific Bank).....	2231
242. Do you know anyone who has?.....	2231
243. Do you know Mattie Pandolfi?.....	2231
244. Do you know Joe Peppe?.....	2231
245. Or Jimmy Ryan, otherwise known as the Postal Kid?..	2231
246. Or Frank Thompson?.....	2231
247. Did you deliver any property of any nature, kind or description to any of those persons in the past six months? (Referring to Pandolfi, Peppe, Ryan and Thompson)	2231
248. Did you receive any from them? (Referring to Pandolfi, Peppe, Ryan and Thompson).....	2231
249. Have you been in communication with any of them during that time? (Referring to Pandolfi, Peppe, Ryan and Thompson).....	2231
1437	
250. Did you ever live at the Wellington Hotel in this City?	2234
251. Have you been there during the past year?.....	2234
252. Did you ever receive any money from David Sullivan in New York City?.....	2234
253. During the past year? (Referring to any money received from David Sullivan in New York City).....	2235
254. Did you receive any money from David Sullivan—any other place during the past year?.....	2235
255. Did you receive any money from Nick Cohen at any place during the past six months?.....	2235
256. Or during the past year?.....	2235
257. Did you give any money to your wife during the past year?	2235
258. Have you been in Atlantic City during the past three months?	2240
259. Have you been in or near Pittsburgh during the past three months?	2240
260. Do you know anyone by the name of Henry Stern?...	2240
261. Have you sent any securities, directly or indirectly to any other country during the past six months?.....	2241
262. Have you had any communication, directly or indirectly with anyone in any foreign country, during the past six months?.....	2241
263. Do you remember meeting Joe Gluck and Nick Cohen at Washers Cafe last October?.....	2241
1437½	
264. Do you remember going with them to the Pennsylvania Station? (Referring to Joseph Gluck and Nick Cohen)	2242

	Page.
265. Do you remember meeting Joe Gluck and Nick Cohen at the Hotel Endicott in this City, last November....	2242
266. Do you know anybody in Cleveland by the name of Feder, F-e-d-e-r?	2242
267. Were you at the Hotel Hollender in Cleveland during the past three months?	2242
268. Were you at the home of Dona Arkin while you were in Cleveland during the past three months?	2243
269. But you did meet her (Dona Arkin) at the Hotel Winton, didn't you?	2243
270. Or Fannie Brice's mother; you did not meet her during the past six months?	2244
271. Would that incriminate you, or tend to? (Referring to meeting Fannie Brice's mother)	2244
272. Were you at any gambling houses in Cleveland during the past three months?	2245
273. Were you in any gambling houses anywhere in the United States during the past three months?.....	2245
274. Were you living on the gains of gambling houses during the past three months?	2245

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SCHEDULE E.

This is a schedule of questions put to the Bankrupt by counsel for the Trustee, to which the Bankrupt objected on the ground that the answer might tend to incriminate him, which objection the Commissioner sustained, and refused to instruct the witness to answer, to which refusal counsel for the Trustee excepted.

	Page.
1. Were you not in possession of a satchel containing a large amount of securities, at the Pennsylvania Railroad Station, and on a train between New York and Washington, when in possession of that claimed satchel containing such securities, in October 1919?.	2339
2. Did you not have in your possession in October 1919, at the Pennsylvania Railroad Station in New York City, and on the train between New York and Washington, a satchel full of securities?	2360
3. Mr. Arndstein, have you had access to any safe deposit box during the past year?	2361
4. Have you had any bank account anywhere in the United States during the past year?	2362
1439	
5. Have you had any safe deposit box either in your name or in the name of any other person, to which you had access, anywhere in the United States, during the past year?	2362

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6. What is the largest you recall? (Referring to the Bankrupt's balance in the Pacific Bank, the Bankrupt having admitted that he had an account in the Pacific Bank)	2363
7. What have been the nature of your dealings with Nick Cohen?	2364
8. What dealings have you had with Nick Cohen during the past year?	2364
9. Do you remember going to Washington, D. C. with Nick Cohen on or about October 12th last?	2366
10. Do you remember meeting Joe Gluck and going with him at the same time?	2366
11. Do you remember meeting David Sullivan in the Pennsylvania Station at the same time?	2366
12. Do you remember meeting David Sullivan in Washington, D. C. on or about October 13th last?	2366
13. Did you receive any securities of any nature, kind or description from Joe Gluck or Nick Cohen in Baltimore, Maryland, or New York City, Philadelphia, or Boston, in October or November last?	2367
1440	
14. Do you know Joseph Gluck, Irving Cluck, Charles Druckker, Eddie Winkler, or any of them?	2367
15. Where did you get the money? (Referring to the fact that the witness had testified that he had certain monies in his possession and under his control)	2370
16. Did you get it this year? (Referring to monies above referred to)	2370
17. Mr. Arndstein, have you delivered any securities to any person, within four months next preceding the filing of the bankrupt petition?	2371
18. In answer to the question whether you had any property of any nature, kind or description since the filing of the petition in bankruptcy in this proceeding, you answered: "Yes; I have had a little money from time to time," from what source did you get that money?...	2372
19. Have you had in your possession at any time since the filing of the petition in bankruptcy, any diamonds or jewelry?	2373
20. Have you had any stocks or bonds during the past year, either in your name or possession, or under your control?	2374
21. Have you had access to any safe deposit boxes during the past year	2374
1441	
22. Did you ever receive any property of any nature, kind or description from Joseph Gluck?	2374
23. Do you know Philip Kastel?	2374

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24. Have you been in communication with Philip Kastel during the past six months?.....	2375
25. Have you been in communication with Joseph Gluck during the past year?.....	2375
26. Did you deliver any securities to Nick Cohen at any time in October, November or December 1919 or January 1920?	2375
27. Do you know Ed. Winkler?.....	2376
28. When did you see Ed. Winkler last?.....	2376
29. Did you ever receive any property from Ed. Winkler?	2376
30. Did you ever deliver or transfer any securities to Nick Cohen since the first of October last?.....	2376
31. Did you deliver any securities, or send any securities to David Sullivan, since October 1st, 1919?.....	2377
32. Had you any business transactions with David Sullivan since October 1st, 1919?.....	2377
33. Did you ever receive any property from David Sullivan since October 1st, 1919?.....	2377
34. Did you have any business transactions with W. W. Easterday at any time since the first of October, 1919?	2378
1442	
35. Did you ever receive any property from W. W. Easterday?	2378
36. Did you ever give any property, or hand over any property to W. W. Easterday, since the 1st of October 1919?	2379
37. Did you ever receive any money from W. W. Easterday since the 1st of October 1919?.....	2379
38. Did you at any time in last October or November meet David Sullivan?	2379
39. What banks, trust companies, or safe deposit companies, have you been to in the past three months?.....	2379
40. Did you, since the 1st of October, 1919, place any securities in any safe deposit box anywhere?.....	2380
41. Have you at any time since the 1st of October 1919 sold or transferred any stocks or bonds?.....	2380
42. Have you received, since the 1st of October 1919, any moneys purporting to be the proceeds of any stocks or bonds, and if so, in what amount?.....	2380
43. Do you refuse to state whether you know Nate Cook of Cleveland, Mr. Arndstein?.....	2381
44. Do you refuse to state whether you know Henry Beckerman of Cleveland?.....	2381
1443	
45. Do you know Samuel Doerfler of Cleveland?.....	2381
46. Do you know either Ernest Bernstein of Cleveland or Alexk Bernstein of Cleveland?.....	2382
47. Do you know under what different names Nick Cohen has been known?.....	2384

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48. Did you ever have any business dealings with Nick Cohen since October 1st, 1919?.....	2384
49. Do you know Arthur Ecremont?.....	2384
50. Did you ever deliver any securities to Arthur Ecremont since October 1st, 1919?.....	2384
51. Did you receive any money, directly or indirectly from Arthur Ecremont since October 1st, 1919?.....	2385
52. Have you, at any time since the filing of the bankruptcy petition herein, delivered any property over to Arthur Ecremont or Phil Kastel, Charles Drucker, Ed. Winkler, or Ed. Furey, or any of them?...	2385
53. Did you receive, from any of those men, during that period any money or securities?.....	2385
54. Didn't you draw a check on that bank account (the Pacific Bank account) since the 1st of January, 1920 for about \$16,000?.....	2387
55. Did you receive any money from David Sullivan any other place than New York City during the past year?.....	2387
1444	
56. Do you decline to answer whether you received any money from David Sullivan in New York City?.....	2387
57. Have you given any money to your wife since the 1st of October 1919?.....	2388
58. Have you sent any securities, directly or indirectly to any other country from this country, during the past six months?	2389
59. Did you meet Joe Gluck and Nick Cohen at the Hotel Endicott in this City last November.....	2389
60. Were you at any gambling houses in Cleveland during the past three months?.....	2390
61. Were you in any gambling houses anywhere in the United States during the past three months?.....	2390
62. Did you lose any funds in any gambling house during the past five months?.....	2390
63. Did you at any time since October 1st 1919 receive any profits of any gambling houses?.....	2391

Arnstein's Testimony.

64. Well, who was with you just before you met your wife and Mr. Fallon?.....	79
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1445 District Court of the United States for the Southern District
of New York.

No. 27525.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Affidavit of Joseph K. Guerin.

STATE OF NEW YORK,
County of New York, ss:

Joseph K. Guerin, being duly sworn, deposes and says:

I. I am over the age of twenty-one years and a Clerk in the office of Saul S. Myers, Esq., the attorney for the Trustee in Bankruptcy herein.

II. On May 24th, 1920, I served the annexed order of Adjudication in Bankruptcy on the Bankrupt at the United States Post Office Building in the Borough of Manhattan, in the City of New York, by delivering to and leaving with him a certified copy of said Order of Adjudication.

III. On the same day I delivered a certified copy thereof to Messrs. Fallon & McGee, the Bankrupt's attorneys herein, as more fully appears from their admission of service on the back of the annexed Order of Adjudication.

IV. I attended before Commissioner Gilchrist on May
1446 24th, 1920, on the examination of the Bankrupt herein under Section 21 A of the National Bankruptcy Act. The Bankrupt testified at that time that he had known of the adjudication of bankruptcy against him before coming to New York on May 15th, 1920, that he had not prepared or filed any schedules of assets and liabilities and had not attempted to prepare any, and was not engaged in preparing any. The testimony on that point is as follows:

"Q. From what newspaper did you receive your information of the adjudication of the bankruptcy against you?

A. I do not know which one.

Q. But you did learn of that before you returned to this city?

A. I cannot fix any time, sir, I do not know.

Q. You do not know whether you knew of it before you came back to the city?

A. I knew of it before I came back but I do not know what time.

Q. Have you prepared any list of your assets and liabilities in this bankruptcy proceeding?

A. I have not prepared anything, sir, at no time.

Q. Are you at work preparing them?

A. No sir.

Q. Have you made any effort so far to prepare any such schedules of your assets and liabilities in this bankruptcy proceeding?

A. No sir.

JOSEPH K. GUERIN.

Sworn to before me this 1st day of June, 1920.

U. S. District Court, S. D. of N. Y. Filed Jun. 28, 1920.

1447

Opinion, A. N. Hand, D. J.

District Court of the United States for the Southern District of New York.

In the Matter of JULES W. ARNSTEIN, Bankrupt.

Motion to Punish for Contempt.

Saul S. Myers, Solicitor for Trustee.

Selden Bacon, Counsel.

William J. Fallon, Solicitor for Bankrupt.

James M. Osborne, Counsel.

AUGUSTUS N. HAND, *District Judge:*

The bankrupt has refused to answer questions relating to his property asserting his constitutional privilege. I have no doubt that the answers might furnish information which would render him liable to prosecutions in the federal courts for concealment of assets to which prosecutions alone the privilege extends.

Ensign v. Commonwealth 227 U. S. 592.

However undesirable it may be that the bankrupt should be exempt from examination as to the disposition of his property, I find the overwhelming weight of authority sustains the asserted privilege. Indeed only one case of importance (*Mackel v. Rochester* 102 Fed. at p. 317) seems to deny it and there the court based its decision upon *Brown v. Walker*, 161 U. S. 591 where the statute gave a broader immunity than Section 7 (9) of the Bankruptcy Act. In this district various decisions upheld the privilege.

In re SHERA 114 Fed. 207;

1448 In re FELDSTEIN, 103 Fed. 269;

In re KANTER, 117 Fed. 356;

See also *Carey v. Donohue*, 209 Fed. 328 at page 332 where the Court of Appeals of the Sixth Circuit sustained the bankrupt's right to refuse to answer. See also

In re SCOTT, 95 Fed. 815;

In re ROSSER, 96 Fed. 305;

In re NACHMAN, 114 Fed. 995;

U. S. v. GOLDSTEIN, 132 Fed. 789;

In re WALSH, 104 Fed. 518;

U. S. v. RHODES, 212 Fed. 518.

In view of the foregoing body of authority I must sustain the privilege.

The decisions of the Supreme Court in *Matter of Harris* 221 U. S. 274 and *Johnson v. U. S.* 228 U. S. 457 in my view distinctly involve the existence of a general privilege on the part of the bankrupt. Justice Holmes said that he could not prevent the use of his books in a criminal proceeding because they no longer belonged to him and were not produced by him but by the trustee. The opinion reads:

"A party is privileged from producing the evidence but not from its production. The transfer by bankruptcy is no different from a transfer by execution of a volume with a confession written on the fly leaf.

It is true that the transfer of the books may have been against the defendant's will but it is compelled by the law as a necessary incident to the distribution of his property not in order to obtain criminal evidence against him. Of course a man cannot protect his property from being used to pay his debts by attaching to it a disclosure of crime. If the documentary confession comes to a third hand *alio intuitu* as this did, the use of it in court does not compel the defendant to be a witness against himself."

If the bankrupt had possessed no general privilege under the Fifth Amendment, why was all this refinement of reasoning necessary to sustain the use of his books before the Grand Jury in *Johnson v. U. S.* (supra).

The motion to punish for contempt is denied.

A. N. H., D. J.

June 28, 1920.

U. S. District Court, S. D. of N. Y. Filed Jun. 28, 1920.

1449

Opinion, A. N. Hand, D. J.

United States District Court, Southern District of New York.

#595.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Fallon & McGee, Attorneys for Bankrupt.

Saul S. Myers and Selden Bacon for Trustee in Bankruptcy.

AUGUSTUS N. HAND, *District Judge*:

It is the rule in this District that a bankrupt who has filed schedules is subject to examination as to the property embraced therein. He asserts not only that he has the property scheduled, but also that he has no other property. See

In re Tobias, 215 Fed. 815;

In re Bendheim, 180 Fed. 918.

It is contended on behalf of the bankrupt that he filed his schedules in this case under compulsion because of the motion made to compel him to file them. Inasmuch, however, as he made no claim of privilege in respect to the filing of schedules, the above mentioned rule stands, and he is subject to examination in regard to what is contained in them, and also as to whether he has any other property.

1450 Judge Learned Hand remarked in his opinion in the case of *In re Tobias*, supra,

"* * * It is as if the bankrupt had sworn on the examination itself: 'I have no property except Whiteacre.' He could not stop the inquiry with that answer, but would be open to further search designed to test the truth."

It may be argued that stolen property is not an asset of the bankrupt estate and that the questions in regard to securities which are thought to have been stolen from the surety companies should be disallowed on the ground that their only effect would be to incriminate the witness. The proceeds of this property which may have reached the bankrupt would be payable to his trustee even though they were subject in the hands of the trustee to equitable liens in favor of the owners of the original securities which would consume such proceeds. Moreover, the securities themselves might become in every sense assets of the estate if the owners by waiving the tort for conversion should prove as creditors in bankruptcy. I think, therefore, that the examination in regard to these securities should not be stopped upon any theory that neither they, nor their proceeds, could belong to the bankrupt estate. It is a fact, however, that an attempt to require the delivery to the trustee of the specific securities referred to in the petition on the ground that the bankrupt has not accounted for them cannot succeed, at least, at the present time because it does not appear that they belonged to the estate. Moreover the application that the bankrupt turn over to the trustee the \$500 which he says his wife gave him, cannot succeed for it is not apparent that this money was given him prior to the date of the filing of the petition. If the trustee wishes to examine
1451 him further about this money he may do so.

In respect to the questions asked the bankrupt, I will order him to answer all the questions in Schedule A, except 3 and 8;

All the questions in Schedule B;

All the questions in Schedule C, except 6 and 40;

All the questions in Schedule D, except 4, 5, 6, 7, 28, 29, 30, 76, 181, 182, 199, 200, 242 and 271;

All the questions in Schedule E, except 43, 44 and 56.

Settle order on notice.

A. N. H., D. J.

August 10, 1920.

1452

Order, A. N. Hand, D. J.

At a Stated Term of the District Court of the United States for the Southern District of New York Held at the United States Court and Post Office Building, in the Borough of Manhattan, in the City of New York, on September 1st, 1920.

Present: Hon. A. N. Hand, District Judge.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Order Directing Bankrupt to Answer Questions.

An order having been made herein on June 1st, 1920 requiring the Bankrupt to show cause why he should not be punished for contempt of court for his refusal to answer certain specified questions and why he should not be required to turn over to the Trustee in Bankruptcy herein certain sums of money and certain specified securities and why he should not be punished for contempt of court for failure to file schedules herein,

Now, on reading and filing the said order to show cause and the affidavits of Saul S. Myers and of Joseph K. Guerin, each sworn to June 1st, 1920, in support thereof and the proof of the service thereof thereon endorsed; and,

1453 On reading, in support of the said motion, the following papers on file herein in the office of the Clerk of the above named Court, to wit, the petition for the involuntary bankruptcy of the said Arnstein, the order adjudicating the said Arnstein a bankrupt, the orders for the examination, under Sect. 21-A of the Bankruptcy Act, of the said Arnstein and witnesses, the testimony of the said Arnstein given pursuant to such orders and the certificates of the Special Commissioners, all specified in the order to show cause, and also the schedules filed herein by the Bankrupt on the 10th day of June, 1920, of his assets and liabilities,

And after hearing Selden Bacon and Saul S. Myers, Esqs., of counsel for the Trustee in Bankruptcy herein in support of the said motion and William J. Fallon and James W. Osborne, Esqs., of counsel for the Bankrupt, in opposition,

And on due proof of due service of said motion papers it is, on motion of Saul S. Myers, attorney for said Trustee,

Ordered, 1. That the motion to punish the Bankrupt for contempt for failure to file his schedules is denied.

2. That the motion to punish the Bankrupt for contempt for failure to answer the several interrogatories put to him at the time they were put is denied.

1454 3. That the motion to require the Bankrupt to make answer to interrogatories, and to so instruct the Commissioner, is granted to the following extent, to wit: The said Bankrupt be and he hereby is ordered to answer all of the questions in Schedule A annexed

to the motion papers herein except questions 3 and 8; and all of the questions in Schedule B annexed to the motion papers; and all of the questions in Schedule C annexed to the motion papers except questions 6 and 40; and all of the questions in Schedule D annexed to the motion papers except questions 4, 5, 6, 7, 28, 29, 30, 76, 181, 182, 199, 200, 242, and 271; and all of the questions in Schedule E annexed to the motion papers except questions 43, 44 and 56. And the Commissioner before whom the examination proceeds is instructed to require proper answers to such interrogatories from the Bankrupt.

The Commissioner is further instructed to require full and proper answers from the Bankrupt to all inquiries germane to any statements made by him contained in his said schedules of assets and liabilities.

It is further ordered, 4. That the said order to show cause be and the same hereby is amended by adding the words "proceeds of the" after the word "the" at the end of the second line of subdivision "(f)" and that so much of the said motion as prays that the said Bankrupt turn over to the Trustee herein such proceeds of certain securities be and the same is hereby denied for the present, but with leave to renew upon further showing.

AUGUSTUS N. HAND,
U. S. D. J.

U. S. District Court, S. D. of N. Y. Filed Sep. 7, 1920.

1455 *Memorandum, Manton, C. J.*

District Court of the United States for the Southern District of New York.

In the Matter of JULES W. ARNDSTEIN, Bankrupt.

After examining the briefs and cases referred to by counsel I am of the opinion that the stay pending the appeal from Judge Hand's order should be denied. An order may be presented accordingly.

MANTON, C. J.

Dated September 13, 1920.

U. S. District Court, S. D. of N. Y. Filed Sep. 13, 1920.

1456

Order, Manton, C. J.

At a Stated Term of the District Court of the United States for the Southern District of New York Held at the United States Court House and Post Office Building, in the Borough of Manhattan, in the City of New York, on September 14, 1920.

Present: Hon. M. T. Manton, Circuit Judge.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

A motion having been made for a stay pending appeal from the order of Hon. A. N. Hand, entered September 7, 1920,

Now, on reading the said order and all the papers upon which the same was made, and on reading all the testimony taken herein and all the orders made herein and the papers upon which the same were made; and it appearing that counsel for the said Bankrupt requested an adjournment of the examination herein from August 24, 1920, to September 10, 1920, and asked to have the examination go over to that day, it is

On motion of Saul S. Myers, Attorney for Hon. Henry A. Gildersleeve, the trustee herein, ordered that the said motion be and the same is hereby denied and that the said examination be proceeded with on the adjourned day, to wit, September 14th, 1920 at 2 p. m.

MANTON, C. J.

Service acknowledged.

U. S. District Court, S. D. of N. Y. Filed Sep. 14, 1920.

1457

Order, Manton, C. J.

At a Stated Term of the District Court of the United States for the Southern District of New York Held at the P. O. Building, in New York City, September 14, 1920.

Present: Hon. M. T. Manton, Circuit Judge.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Order Adjudging Bankrupt in Contempt.

On reading and filing the testimony of the Bankrupt herein, taken September 14, 1920, before Commissioner Gilchrist, the order of Hon. M. T. Manton dated September 14, 1920, denying a stay and the papers upon which the said order was based, the order of Hon. A. N. Hand dated and entered September 7, 1920, directing the bankrupt to answer, and the papers upon which the said order was made, and on reading all of the other orders, papers and proceedings herein, and after hearing Saul S. Myers, Esq., for the trustee and William J. Fallon, Esq., for the Bankrupt, and it appearing that the Bank-

rupt was duly sworn and the questions put as directed by Hon. A. N. Hand and that the Bankrupt refused to answer the same, it is on motion of Saul S. Myers, attorney for Hon. Henry A. Gildersleeve, Trustee, ordered, adjudged and determined,

First. That the said Bankrupt is guilty of a contempt of this Court in having wilfully and deliberately disobeyed said lawful orders of this Court dated September 7 and September 14, 1920, respectively and in having wilfully and deliberately refused to answer questions about his assets and liabilities and about his schedules.

Second. That the said Bankrupt, residing at No. 1 West 83rd Street, New York, be forthwith arrested by the Marshal for the Southern District of New York and brought before this Court this day, to be committed, as for the contempt aforesaid, and to be imprisoned by said Marshal until he shall have fully complied with said orders and all directions of the Special Commissioners and the Referee herein.

MANTON, C. J.

1459

Petition for Writ of Habeas Corpus.

District Court of the United States for the Southern District of New York.

In the Matter of JULES W. ARNDSTEIN, Petitioner.

To the Judges of the District Court of the United States for the Southern District of New York:

The petition of Jules W. Arndstein respectfully shows:

First. That your petitioner is a citizen of the United States and of the State of New York and is a resident of the City of New York in said State.

Second. That your petitioner is now unlawfully and without due process of law and in violation of his rights under the Federal Constitution imprisoned and restrained of his liberty in the Southern District of New York by Thomas D. McCarthy, United States Marshal for the Southern District of New York.

Third. Your petitioner is held by said United States Marshal solely under the virtue of an order heretofore made by the District Court of the United States for the Southern District on the 15th day of September, 1920, committing your petitioner to the custody of said United States Marshal for an alleged contempt in refusing to answer certain questions propounded to him before and in the presence of Alexander Gilchrist, Jr., a United States Commissioner for the Southern District of New York, sitting in the Southern District of the State of New York by the attorney for the trustee in bankruptcy in the matter of Nicholas Arndstein, bankrupt; that your

petitioner is restrained of his liberty only under and by virtue of said order of commitment and not for any other cause or 1460 reason; that your petitioner's refusal to answer the questions asked him in said bankruptcy proceedings grew out of the facts and circumstances hereinafter set forth.

Fifth. On February 20th, 1920, the National Surety Company filed a petition for involuntary bankruptcy against your petitioner, a copy of which petition is hereto annexed, and marked "Exhibit A;" that on the 20th day of February, 1920, a subpoena in bankruptcy was issued returnable February 27th, 1920; that on the 25th day of February, 1920, said subpoena was served by delivery to Sylvia Roma, a maid employed by Fanny Bryce Arndstein, your petitioner's wife; that on the 4th day of March, 1920, an adjudication of bankruptcy was entered by default and an order of reference in said matter entered referring same to Seaman Miller, a copy of which adjudication of bankruptcy, and order of reference is hereto annexed and marked "Exhibit B;" that on the 18th day of May, 1920, an order for the examination of your petitioner under section 21a of the Bankruptcy Act was served and filed upon said petitioner; that thereafter and on various dates your petitioner was examined under section 21a and refused to answer certain questions propounded him by the attorney for the trustee upon the ground that said questions would tend to degrade or incriminate your petitioner; that thereafter and on the first day of June, 1920, an order to show cause to punish your petitioner for contempt was signed by Augustus N. Hand, United States District Judge, and thereafter served upon your petitioner; a copy of said order to show cause and the affidavits upon which same were based is hereto annexed and marked "Exhibit C;" that thereafter and on the 10th day of June, 1920, pursuant to an order of this Court and under the direction of the said Court schedules were filed by your petitioner, a copy of which schedule is hereto 1461 annexed and marked "Exhibit D;" that thereafter and on the 29th day of June, 1920, a decision was rendered by said Augustus N. Hand holding that your petitioner should not be punished for contempt and that your petitioner was privileged in refusing to answer said questions under the Constitution of the United States, a copy of which opinion is hereto annexed and marked "Exhibit E;" that thereafter and on the 30th day of June, 1920, a motion was heard by Justice Hon. August A. Hand as to whether the bankrupt should be required to testify about his schedules and whether the bankrupt should not be required to turn over the proceeds of the securities set forth in the motion papers herein; that thereafter and on August 10th, 1920, a decision was handed down by Justice Hand, directing your petitioner to answer certain questions by reason of the fact that your petitioner had filed the schedules as ordered and directed by said Court, a copy of which opinion is hereto annexed and marked "Exhibit F;" that thereafter and on the 7th day of September, 1920, an order was entered in the clerk's office for the Southern District of New York, directing your petitioner to make answer to certain interrogatories, a copy of which

order is hereto annexed and marked "Exhibit H;" that thereafter and on the 14th day of September, 1920, your petitioner appeared before United States Commissioner Alexander Gilchrist, Jr., in pursuance to the subpoena served upon your petitioner under section 21c of the Bankruptcy Act and upon being asked the questions contained in schedule C under said order refused to answer said questions upon the ground that said questions would tend to degrade and incriminate your petitioner, and thereupon your petitioner was directed by said Commissioner to answer said questions and then again your petitioner refused to answer said questions upon the ground that said questions would tend to degrade and incriminate your petitioner; that thereafter upon the 15th day of September, 1920, an order was entered by Circuit Judge Martin T. Manton, sitting 1462 as a District Judge for the Southern District of New York, committing your petitioner to the custody of Thomas D. McCarthy as Marshal for the Southern District of New York for his refusal to answer the questions directed to be answered by the Commissioner upon the hearing had under section 21a of the Bankruptcy Act, a copy of which order is hereto annexed and marked Exhibit "I," that under said order your petitioner was taken into custody by the said Marshal and restrained of his liberty and is now in the custody and control of said Marshal by virtue thereof.

That on the — day of February, 1920, three indictments were found against your petitioner by the Grand Jury of New York County, copies of which indictments are hereto annexed and marked Exhibits "J," "K" and "L". That your petitioner is informed and believes that the bonds mentioned in said indictments are the same bonds on account of which the National Surety Company, the petitioning creditor in the bankruptcy proceedings, claims to be a creditor of your petitioner. That your petitioner is also informed and believes that certain proceedings have been taken before the United States Grand Jury for the District of Columbia, and that your petitioner is about to be indicted by said Grand Jury, the subject matter of said indictment by the Federal Grand Jury, as your petitioner is informed and believes, being the bonds on account of which the National Surety Company, the petitioning creditor in the bankruptcy proceedings, claims to be a creditor of your petitioner.

That under the facts hereinbefore set out by your petitioner and from the face of said petition the Court was without jurisdiction to adjudge your petitioner a bankrupt; that your petitioner was not guilty of contempt in refusing to answer the questions asked him by said United States Commissioner in said bankruptcy proceeding and that the District Court had no jurisdiction or power to 1463 adjudge your petitioner guilty of contempt, and said order of commitment is null and void, and the arrest and detention of your petitioner is without due process of law and in violation of his Constitutional rights.

Wherefore, your deponent prays that a writ of habeas corpus shall be directed to said Thomas D. McCarthy, Marshal of the United States, and to each and all of his deputies, requiring him and them to bring and have your petitioner before this Court at a time to be

determined by this Court together with the true cause of the detention of your petitioner to the end that due inquiry may be had in the premises and your petitioner will ever pray, etc.

Dated New York, New York, September 15th, 1920.

JULES W. ARNDSTEIN,
Petitioner.

FALLON & MCGEE,
Attorneys for Petitioner.

149 Broadway, Borough of Manhattan, New York City.

1464 UNITED STATES OF AMERICA,
Southern District of New York:

STATE OF NEW YORK,
County of New York, ss:

Jules W. Arndstein, being duly sworn, deposes and says: That he is the person whose name is subscribed to the foregoing petition for a writ of habeas corpus; that he has read said petition and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true. That no previous application for the writ of habeas corpus has been made.

JULES W. ARNDSTEIN.

Subscribed and sworn to before me, this 15 day of September, 1920.

ALEX. GILCHRIST,
Notary Public, Rockland, N. Y. Co.

U. S. District Court, S. D. of N. Y. Filed Sep. 18, 1920.

1465 *Memorandum, Manton, C. J.*

District Court of the United States for the Southern District of New York.

#275.

In the Matter of JULES W. ARNDSTEIN, Petitioner.

Memorandum.

The relator seeks his release by a writ of habeas Corpus contending that he is deprived of his liberty without due process of law. A petition in bankruptcy was filed against the relator on the petition of the National Surety Company. He was thereafter adjudicated a bankrupt on the 4th of March, 1920 and ordered to file schedules in triplicate as required by law, within ten days from the date thereof. In pursuance to this order, he filed his schedules mentioning his assets and liabilities. He was then subpoenaed to appear under Par.

21-A of the Bankruptcy Act for examination. He appeared. He took an oath voluntarily and when asked questions which concerned his assets, asserted his alleged Constitutional privilege, declaring that his answers would tend to incriminate or degrade him. This question was thereafter referred to Judge A. N. Hand and in an opinion filed August 10, 1920, the bankrupt was directed to answer all questions relating to Schedule B and Schedule C, except 1466 Nos. 6 and 40, and all questions in Schedule D, except Nos. 4, 5, 6, 7, 28, 29, 30, 76, 181, 182, 199, 200, 242 and 271, and all questions in Schedule E, except Nos. 43, 44 and 45. An order was accordingly entered on September 1, 1920. Judge Hand held that since the bankrupt filed his schedules, he waived any privilege he might have to refuse to answer on the ground that his answers might tend to incriminate or degrade him. This order by Judge Hand was effective when, on the 14th of September, 1920, the bankrupt was again required to appear for examination. When examined, the bankrupt again refused to answer the questions directed to be answered in the order of September 1st, and for such refusal an order was granted on September 14, 1920, adjudging the bankrupt in contempt of court. He was placed under arrest by the Marshal and immediately made this application for a writ of Habeas Corpus.

The right to a Habeas Corpus is not a substitute for an appeal. (*Storti v. Mass.*, 183 U. S. 137; *In re McKenzie*, 180 U. S. 536.) Nor is the relator entitled to a writ of Habeas Corpus as a matter of right or form as urged by his counsel. On this application, the relator seeks to contest the validity or the sufficiency of the petition in bankruptcy, thus attacking it collaterally. When the petition was filed, he did not contest the petition in time, but did a day late- file an answer to the petition. This answer was late and therefore has not been received as such, but the relator did not endeavor to open his default. He did file his schedules and an oath was administered to him in the proceedings and he answered some preliminary questions and refused to answer questions concerning his assets 1467 and liabilities as he referred to them in his schedules. By this procedure and conduct, he waived any objections which he might make as to the sufficiency of the petition. Further, the petition in bankruptcy cannot be attacked collaterally, even if it were demurrable or dismissible, on this application. (*In re Edelstein*, 149 Fed. 636; *In re Clisdell*, 101 Fed. 240.) The remedy which the relator should have invoked is the application to dismiss the petition in the bankruptcy proceeding. While the order of Judge A. N. Hand stands directing him to answer questions, a refusal to answer these questions is a contempt of court and therefore the order adjudging him in contempt was properly granted. If the relator felt aggrieved by Judge Hand's order, he should have proceeded by a petition to revise and seek to reverse it in the Circuit Court of Appeals. He does not do this, but urges here that he may test the question on a writ of Habeas Corpus, contending that his Constitutional rights are invaded if he be required to answer the questions. It is clear that this contention is a fallacy. I fully agree

with Judge Hand's decision as to this and the cases which he cites fully support his conclusions of law.

A bankrupt who has taken part in a bankruptcy proceeding by attempting to file an answer and later to file his schedules, has waived any constitutional privileges which might be involved in answering the questions propounded. The matter is too plain in reason and in law for me to grant a writ of habeas corpus and thus permit the relator to attack the order of Judge Hand. Particularly is this so when he is afforded relief by a petition to revise if an error has been committed.

1468 The application for a writ of Habeas Corpus is therefore denied, and the relator remanded to the custody of the Marshal with directions to place him in prison if he persists in his refusal to answer the questions propounded

An order may be presented accordingly.

Dated: September 17th, 1920.

MANTON,
U. S. Circuit Judge.

U. S. District Court, S. D. of N. Y. Filed Sep. 17, 1920.

1469 At a Stated Term of the District Court of the United States for the Southern District of New York Held at the U. S. Court and P. O. Building, in the Boro of Manhattan, in the City of New York, September 20th, 1920.

Present: Hon. Martin T. Manton, Circuit Judge sitting as a District Judge.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Order for Denying Application for Writ of Habeas Corpus, etc.

The bankrupt herein having made application for a writ of Habeas Corpus now on reading and filing the petition for such Writ duly verified by the bankrupt and on reading the order made herein Sept. 14, 1920 denying the bankrupt's motion for a stay pending appeal from the order of Hon. A. N. Hand entered Sept. 7, 1920 and the order entered Sept. 15, 1920 adjudging the bankrupt in contempt of court and directing his imprisonment and all the papers upon which the said orders were made and on reading all of the papers and proceedings herein and after hearing William J. Fallon, Esq. and James W. Osborne, Esq. counsel for the bankrupt in support of the application for writ of Habeas Corpus and Saul S. Myers, Esq., counsel for Hon. Henry A. Gildersleeve, Trustee in Bank-
1470 ruptcy herein in opposition, it is on motion of Saul S. Myers, Attorney for the said Trustee, ordered,

That the said application be and the same hereby is in all respects denied.

And the bankrupt having been placed in the custody of his

counsel, William J. Fallon, Esq., pending the hearing and determination of the application above referred to, it is ordered,

That the said bankrupt, Nicholas Arnstein, be and hereby is remanded to the custody of the U. S. Marshal for the Southern District of New York in accordance with the order of this Court herein of date September 14th, 1920, and the said Marshall be and he hereby is directed to forthwith arrest the said bankrupt and place him in Ludlow Street jail and keep him there in conformity with said order of September 14th, 1920 as long as he persists in his refusal to answer fully the several questions propounded, and to be propounded, which questions are fully referred to and described in the order of this Court herein made by Hon. A. N. Hand, entered Sept. 7th, 1920, or any of them, and it is further ordered,

That the said William J. Fallon be and he hereby is directed to surrender said bankrupt to the U. S. Marshal for the Southern District of New York, for imprisonment pursuant to this order, on September 20th, 1920 at 10 A. M.

MANTON,
Circuit Judge.

U. S. District Court S. D. of N. Y. Filed Sep. 20, 1920.

1471

Supreme Court of the United States.

JULES W. ARNSTEIN, Petitioner,

v.

THOMAS D. MCCARTHY, United States Marshal of the Southern District of New York.

Petition for Writ of Habeas Corpus.

To the Judges of the Supreme Court of the United States:

The petition of William J. Fallon respectfully shows:

First. That your petitioner is the attorney for Jules W. Arnstein, the above named bankrupt.

Second. That said Jules W. Arnstein is a citizen of the United States and of the State of New York and is a resident of the City of New York in said State.

Third. That said Jules W. Arnstein is now unlawfully and without due process of law in violation of his rights under the Fifty and Fourteenth Amendments, respectively, of the Federal Constitution imprisoned and deprived of his liberty in the Southern District of New York by Thomas D. McCarthy, United States Marshal for the Southern District of New York, pursuant to an order of said Court.

Fourth. That said Jules W. Arnstein is held by said United States Marshal solely under the virtue of an order heretofore made by the District Court of the United States for the Southern District of New

York on the 15th day of September, 1920, committing said Jules W. Arndstein to the custody of said United States Marshal for an alleged contempt in refusing to answer certain questions propounded to him before and in the presence of Alexander Gilchrist, Jr., a United States Commissioner for the Southern District of New York, sitting in the Southern District of the State of New York, by the attorney for the trustee in bankruptcy in the matter of Nicholas Arndstein, bankrupt; that said Jules W. Arndstein is restrained of his liberty only under and by virtue of said order of commitment and not for any other cause or reason; that said Arndstein's refusal to answer the questions asked him in said bankruptcy proceedings grew out of the facts and circumstances hereinafter set forth.

Fifth. On February 20th, 1920, the National Surety Company filed a petition for involuntary bankruptcy against said Jules W. Arndstein, a copy of which petition is hereto annexed and marked Exhibit "A;" that on the 20th day of February, 1920, a subpoena in bankruptcy was issued returnable February 27th, 1920; that on the 25th day of February, 1920, said subpoena was served by delivery to Sylvia Roma, a maid employed by Fanny Brice Arndstein, the wife of said Jules W. Arndstein; that on the 4th day of March, 1920, an adjudication of bankruptcy was entered by default and an order of reference in said matter entered referring same to Seaman Miller, a copy of which adjudication of bankruptcy, and order of reference is hereto annexed and marked Exhibit "B;" that on the 18th day of May, 1920, an order for the examination of your said Jules W. Arndstein under section 21-a of the Bankruptcy Act was served and filed upon said Jules W. Arndstein; that thereafter and on various dates said Jules W. Arndstein was examined under section 21-a and refused to answer certain questions propounded him by the attorney for the trustee upon the ground that said questions would tend to degrade or incriminate him; that thereafter and on the first day of June, 1920, an order to show cause to punish said Jules W. Arndstein for contempt was signed by Augustus N. Hand, United States District Judge, and thereafter served upon said Jules W. Arndstein; a copy of said order to show cause and the affidavits upon which same were based is hereto annexed and marked Exhibit "C;" that thereafter and on the 10th day of June, 1920, pursuant to an order of the United States District Court for the Southern District of New York and under direction of said Court schedules were filed by said Jules W. Arndstein, a copy of which schedules is hereto annexed and marked "Exhibit D;" that thereafter and on the 29th day of June, 1920, a decision was rendered by said Augustus N. Hand holding that said Jules W. Arndstein should not be punished for contempt and that said Jules W. Arndstein was privileged in refusing to answer said questions under the Constitution of the United States, a copy of which opinion is hereto annexed and marked "Exhibit E;" that thereafter and on the 30th day of June, 1920, a motion was heard by Justice Hon. Augustus N. Hand as to whether the bankrupt should be required to testify about his schedules and whether the bankrupt should not be required to turn

over the proceeds of the securities set forth in the motion papers herein; that thereafter and on August 10th, 1920, a decision was handed by Justice Hand, directing said Jules W. Arndstein to answer certain questions by reason of the fact that said Jules W.

Arndstein had filed the schedules as ordered and directed by 1474 said Court, a copy of which opinion is hereto annexed and marked "Exhibit F;" that thereafter and on the 7th day of September, 1920, and order was entered in the clerk's office for the Southern District of New York, directing said Jules W. Arndstein to make answer to certain interrogatories, a copy of which order is hereto annexed and marked "Exhibit H;" that thereafter and on the 14th day of September, 1920, said Jules A. Arndstein appeared before United States Commissioner Alexander Gilchrist, Jr., in pursuance to the subpoena served upon said Jules W. Arndstein under section 21-a of the Bankruptcy Act and upon being asked the questions contained in schedule C under said order refused to answer said questions upon the ground that said questions would tend to degrade and incriminate him; that thereafter and on the 15th day of September, 1920, an order was entered by Circuit Judge Martin T. Manton sitting as a District Judge for the Southern District of New York committing said Jules W. Arndstein to the custody of Thomas D. McCarthy as Marshal for the Southern District of New York for his refusal to answer the questions directed to be answered by the Commissioner upon the hearing had under section 21-a of the Bankruptcy Act, a copy of which order is hereto annexed and marked "Exhibit I;" that under said order in violation of the Fifty Amendment of the Federal Constitution it was ordered that he be compelled to be a witness against himself said Jules W. Arndstein was taken into custody by the said Marshal and deprived of his liberty and is now in the custody and control of said Marshal by virtue thereof.

1475 That on the — day of February, 1920, three indictments were found against said Jules W. Arndstein by the Grand Jury of New York County, copies of which indictments are hereto annexed and marked "Exhibits J. K and L." That your petitioner is informed and believes that the bonds mentioned in said indictments are the same bonds on account of which the National Surety Company, the petitioning creditor in the bankruptcy proceedings, claims to be a creditor of said Jules W. Arndstein. That your petitioner is also informed and believes that certain proceedings have been taken before the United States Grand Jury for the District of Columbia, and said Jules W. Arndstein is about to be indicted by the Federal Grand Jury, as your petitioner is informed and believes, being the bonds on account of which the National Surety Company, the petitioning creditor in the Bankruptcy proceedings, claims to be a creditor of said Jules W. Arndstein.

That on the 16th day of September, 1920, the said Jules W. Arndstein applied to Hon. Martin T. Manton, Circuit Judge, sitting at the District Court for the Southern District of New York, for a writ of habeas corpus. That said writ of habeas corpus was on the 17th day of September, 1919, denied by said Hon. Martin T. Manton, an

opinion having been handed down by him a copy of which is hereto annexed and marked "Exhibit M."

Wherefore, your petitioner prays that a writ of habeas corpus shall be directed to said Thomas D. McCarthy, Marshall of the United States, and to each and all of his deputies, requiring him and them to bring and have said Jules W. Arndstein before this Court at a time to be determined by this Court together with the true
1476 cause of the detention of said Jules W. Arndstein to the end that inquiry may be had in the premises and your petitioner will ever pray, etc.

That no previous application for the relief asked for herein has been made, except as hereinabove stated.

Dated, Washington, D. C., September 22, 1920.

WILLIAM J. FALLON,
Petitioner.

Filed, Sept. 25, 1920. U. S. Dist. Court, S. D. of N. Y.

1477

B.

District Court of the United States, Southern District of New York.

In the Matter of the Application of JULES W. ARNDSTEIN, Petitioner for a Writ of Habeas Corpus Directed to Thomas D. McCarthy, U. S. Marshal for the Southern District of New York.

Memorandum.

Certain papers have been submitted to me containing a petition for a writ of habeas corpus directed as above and entitled in the Supreme Court of the United States and formally addressed to the "Judges of the Supreme Court of the United States."

I take it that the application is made to me merely as a United States Judge, and that it makes very little difference in substance what may be the caption or form of the proceeding.

Revised Statutes Section 755 requires the Judge to whom an application is made to award the writ "unless it appears from the petition itself that the party is not entitled thereto."

From the papers attached to the petition or from the papers on file in this Court and referred to in the petition, the following appears: On August 10, 1920, Arnstein was directed by Judge Augustus N. Hand to answer certain questions put to him in a bankruptcy proceeding.

The reasons given by Judge Hand for this direction are substantially those some time ago set forth in another case by Judge
1478 Learned Hand, In re Tobias, 215 Fed. Rep. 815.

Arnstein refused to comply with this direction of the Court and answer the questions or any of them, but I cannot ascertain from the records of the District Court for the Southern District that he has ever taken any appellate proceedings to review Judge A. N.

Hand's direction. Having persisted in his refusal as aforesaid, Arnstein was on or about the 15th day of September, 1920, committed as for a contempt by Judge Martin T. Manton.

Immediately upon such commitment he petitioned for a writ of habeas corpus, which was refused for reasons set forth at length in an opinion filed by Judge Manton on September 17, 1920. I am informed, but there is no record evidence thereof before me, that since that date efforts have been made by Arnstein to obtain other writs of habeas corpus or enlargement upon bail from the Circuit Justice.

The papers supporting this petition show conclusively that the one legal question raised throughout by Arnstein is that by requiring him to answer certain questions and committing him for not answering his constitutional rights have been invaded.

This is a mere question of law which has now been several times argued in this very proceeding and as to which I fully agree with my colleagues. I am therefore of opinion that it appears from the petition itself that Arnstein is not entitled to the habeas corpus prayed for and the application therefor is denied.

C. M. HOUGH, C. J.

Sept. 24, 1920.

Endorsed: U. S. District Court, S. D. of N. Y. Filed Sep. 25, 1920.

1479 Supreme Court of the United States, October Term, 1920.

No. 575.

JULES W. ARNDSTEIN, Appellant,

VS.

THOMAS D. MCCARTHY, United States Marshal for the Southern District of New York.

Appeal from the District Court of the United States for the Southern District of New York.

(November 8, 1920.)

Justice McREYNOLDS delivered the opinion of the Court:

Holding that the petition failed to disclose adequate grounds therefor the Court below denied appellant's application for a writ of habeas corpus through which he sought relief from confinement for contempt. The cause is here by reason of the constitutional question involved.

The petition alleges that having been adjudged an involuntary bankrupt Arnstein was called before Special Commissioners for examination under Section 21-A Bankruptcy Act. He refused to answer a long list of questions, claiming that to do so might tend to

degrade or incriminate him. The District Judge upheld this contention and denied a motion to punish for contempt.

That subsequent to such examination and under the direction of the Court the bankrupt filed schedules under oath which purported to show his assets and liabilities. When interrogated concerning them he set up his constitutional privilege and refused to answer many questions which are set out. Thereupon he was committed to jail.

1480 The writ was refused upon the theory that by filing schedules without objection the bankrupt waived his constitutional privilege and could not thereafter refuse to reply when questioned in respect of them. This view of the law we think is erroneous. The schedules standing alone did not amount to an admission of guilt or furnish clear proof of crime, and the mere filing of them did not constitute a waiver of right to stop short whenever the bankrupt could fairly claim that to answer might tend to incriminate him. (See *Brown vs. Walker*, 161 U. S. 591, 597; *Foster vs. People*, 18 Mich. 266; *People vs. Forbes*, 143 N. Y. 219, 230; *Regina vs. Garvett*, 2 C. & F. K. 474, 495.)

It is impossible to say on mere consideration of the questions propounded, in the light of the circumstances disclosed, that they could have been answered with entire impunity. The writ should have issued. "No person shall be compelled in any criminal case to be a witness against himself." 5th Amendment.

"This provision must have a broad construction in favor of the right which it is intended to secure."

"The object was to secure that a person should not be compelled when acting as a witness in any investigation to give testimony which might tend to show that he himself had committed a crime." *Counselman vs. Hitchcock*, 142 U. S. 547, 562.

The protection of the Constitution was not removed by the provision in Section 7 of the Bankruptcy Act.

"No testimony given by him shall be offered in evidence against him in any criminal proceeding."

"It could not and would not prevent the use of his testimony to search out other testimony to be used in evidence against him or his property."

Counselman vs. Hitchcock, p. 564.

The judgment below must be reversed and the cause remanded for further proceedings in conformity with this opinion.

Mr. Justice Day took no part in the consideration or decision of this cause.

1482 Supreme Court of the United States, October Term, 1920.

No. 575.

JULES W. ARNDSTEIN, Appellant,

vs.

THOMAS D. MCCARTHY, United States Marshal for the Southern
District of New York.

Petition of Trustee in Bankruptcy for Leave to Intervene, for
Certification of the Entire Record, and for Reargument.

(December 20, 1920.)

Memorandum for the Court by Mr. Justice McReynolds.

The Trustee in Bankruptcy has filed an earnest petition asking that we (a) allow him to intervene, (b) permit reargument of the appeal, (c) direct that the entire record be certified to this court, (d) recall the mandate, (e) stay all proceedings in respect thereto, and (f) grant further and proper relief.

The court below heard the cause as upon demurrer and held the petition for habeas corpus insufficient. Disagreeing with the result we concluded that the bankrupt did not waive his constitutional privilege merely by filing sworn schedules, that the petition was adequate, and that the writ should have issued. The mandate only

1483 requires the trial court to accept our decision upon the point of law, to issue the writ and then to proceed as usual. If the petition does not correctly set forth the facts, or if proper reasons exist for holding the prisoner not shown by the petition neither our opinion nor mandate prevent them from being set up in the return and duly considered.

Alleged defects in the record appear to be based upon a misconception.

Our conclusion concerning the constitutional question presented, we think, is so plainly correct that a reargument would be unprofitable.

The petition is denied.

Mr. Justice Day took no part in the consideration or decision of this cause.

1484

Order Allowing Writ, Mayer, D. J.

At a State Term of the United States District Court Held in and for the Southern District of New York at the United States Court House and Post Office Building, in the Borough of Manhattan, City, County, and State of New York, on the 24th Day of March, 1921.

Present: Hon. Julius M. Mayer, Judge.

In the Matter of JULES W. ARNDSTEIN, Petitioner.

This cause having heretofore come on for hearing in this court and an order having been entered in said cause on the 20th day of September, 1920, dismissing the application for a writ of habeas corpus and remanding the petitioner to the custody of the United States Marshal for the Southern District of New York; and the petitioner having thereafter by an appeal obtained a transcript of the record to be brought into the Supreme Court of the United States, and the said Supreme Court of the United States having transmitted to this court its mandate dated November 8, 1920, reversing said order of this court dated September 20, 1920 with costs of said appeal; and the trustee in bankruptcy having petitioned the Supreme Court of the United States for leave to intervene, for certification of the entire record, and for reargument of the appeal; and the
1485 Supreme Court on the 20th day of December 1920, having denied the said petition and delivered its memorandum opinion in the following words, namely:

"The Trustee in Bankruptcy has filed an earnest petition asking that we (a) allow him to intervene, (b) permit reargument of the appeal, (c) direct that the entire record be certified to this court, (d) recall the mandate, (e) stay all proceedings in respect thereto, and (f) grant further and proper relief.

The court below heard the cause as upon demurrer and held the petition for habeas corpus insufficient. Disagreeing with the result we concluded that the bankrupt did not waive his constitutional privilege merely by filing sworn schedules, that the petition was adequate, and that the writ should have issued. The mandate only requires the trial court to accept our decision upon the point of law, to issue the writ and then to proceed as usual. If the petition does not correctly set forth the facts, or if proper reasons exist for holding the prisoner not shown by the petition neither our opinion nor mandate prevent them from being set up in the return and duly considered.

Alleged defects in the record appear to be based upon a misconception.

Our conclusion concerning the constitutional question presented, we think, is so plainly correct that a reargument would be unprofitable.

The petition is denied."

Now upon reading and filing the said mandate of the Supreme Court of the United States dated November 8, 1920 and said memorandum opinion of the Supreme Court of the United States dated December 20, 1920, and upon motion of Saul S. Myers, Esq., counsel for the trustee in bankruptcy, it is

Ordered that the judgment of the Supreme Court of the United States in this cause dated November 8, 1920 and December 20, 1920, be and the same hereby is made the judgment of this court; and it is further

Ordered that the order of this court dated September 20, 1920 denying the petitioner's application for a writ of habeas corpus, be and the same is hereby reversed; and it is further

Ordered that the petitioner's application for a writ of habeas corpus be and the same is hereby allowed and that the clerk of this court be and he hereby is directed to issue the said writ of habeas corpus, returnable before the District Court of the United States for the Southern District of New York in the Second Circuit on the 31st day of March 1921, at 4 p. m.

Enter.

J. M. MAYER,
U. S. D. J.

Filed U. S. District Court, S. D. of N. Y., March 25, 1921.

Copy received March 15th, 1921.

FALLON & MCGEE,
Attorneys for Petitioner.

1487 *Opinion of Judge A. N. Hand Sustaining Writ of Habeas Corpus and Discharging Arndstein.*

United States District Court, Southern District of New York.

JULES W. ARNDSTEIN, Petitioner,
against

THOMAS D. MCCARTHY, United States Marshal for the Southern District of New York.

William J. Fallon, Attorney for Petitioner.

Saul S. Myers, Attorney for Thomas D. McCarthy, U. S. Marshal,
Francis M. Scott, Walter H. Pollak and Saul S. Myers, Counsel.

AUGUSTUS N. HAND, *District Judge:*

The Supreme Court has dealt with this writ of habeas corpus and has held that it was not apparent on its fact that some of the questions propounded to the petitioner would tend to incriminate him or degrade him in such a sense that he did not have the privilege of declining to answer them. They so held because they were of the opinion that the filing of his schedules in bankruptcy was not in itself and alone a waiver of his privilege. They directed that the writ which had been denied upon the petition should issue and

the case should then proceed as usual. Accordingly a return
1488 has been filed to the writ setting forth not only the answers,
but refusals to answer. Only the questions and the schedules
in bankruptcy accompanied the petition. The schedules however
denied that he had any property other than a deposit of \$18,000.
in the Pacific Bank. If a denial and partial disclosure of some
property opened the door to unlimited cross-examination the sched-
ules had that effect but the Supreme Court has held otherwise with
the schedule before them.

Arndstein was asked the following questions in his examination
under Section 21a of the Bankruptcy Act and gave the following
answers:

"Q. Did you ever have any stocks or bonds in your possession
or under your control, at any time during the past year?

A. I never owned a share of stock. I never had a share of stock
that was good, to my knowledge, in my life.

"Q. What do you mean by 'good'?

A. Well, anything that was negotiable.

"Q. Did you ever have any that were not negotiable?

A. Yes; I bought some years ago.

"Q. We are talking about the past 12 months?

A. No sir.

"Q. Have you had any stocks or bonds in your possession or
under your control at any time during the past year?

A. I just answered that.

"Q. No; I didn't get the answer (question read).

A. I answered that; I said no."

Now it might have been reasonably contended before the decision
of the Supreme Court that the answers to these questions laid
1489 the foundation for a very general cross-examination about
the property of the witness, where it then was, or what had
become of it. But I am unable to see how the answers differ in
effect from the sworn schedules. These the Supreme Court has held
were not such a voluntary disclosure as to the financial condition
of the witness as to deprive him of the right to refuse to testify further
about his property and to terminate his privilege. The disclosure
of the names and travels of a man accused of going under various
fictitious names and transporting stolen securities might well tend
to incriminate him. If by his denials and partial disclosures he
has not opened the door his privilege as to these questions should
be sustained. Apparently the Supreme Court has treated an exam-
ination of the bankrupt where he has been called as a witness by
the other side in a different way from an examination where he has
taken the stand and testified in his own behalf. In the latter case
under all the decisions the broadest cross-examination is proper.
The ruling in the Arndstein case would seem to indicate that where
the bankrupt does not testify in his own behalf he is at liberty
to cease disclosures about his property, even though some have been
made, whenever there is any just ground to believe the answers may

tend to incriminate him. The deduction I have made as to the meaning of the decision of the Supreme Court on the Arnd-
1490 stein appeal is opposed to the weighty arguments made in the interesting and able brief submitted by counsel for the United States Marshal, but I can reconcile no other conclusion than the one I have reached with what has been decided by the appellate court, and the remedy, if any, must lie in an appeal to that court who can distinguish the present record from the one already before it if my failure to do this is erroneous.

The writ is sustained and the petitioner is discharged.

A. N. H., D. J.

July 7, 1921.

Filed U. S. District Court, S. D. of N. Y., July 7, 1921.

1491

Order, A. N. Hand, D. J.

Filed Oct. 31, 1921.

At a Stated Term of the United States District Court for the Southern District of New York Held at the Court Rooms Thereof, Post Office Building, in the Borough of Manhattan, City of New York, October 31, 1921.

Present: Hon. A. N. Hand, District Judge.

JULES W. ARNDSTEIN, Petitioner,

against

THOMAS D. MCCARTHY, United States Marshal for the Southern District of New York, Respondent.

The Supreme Court of the United States having reversed the order of this Court, dated September 20, 1920, which dismissed the petitioner's application for a writ of Habeas Corpus and an order having been entered herein dated March 24, 1921, making the judgment of the Supreme Court of the United States the judgment of this Court and ordering that the petitioner's application for a writ of Habeas Corpus be allowed and the Clerk of this Court having issued such writ dated April 1, 1921, and the United States Marshal for the Southern District of New York having filed his return dated
April 2, 1921,

1492 Now, on reading and filing the following papers, to wit:

- (1) Writ of Habeas Corpus, dated April 1, 1921.
- (2) Marshal's return, dated April 2, 1921.
- (3) Petition for the involuntary bankruptcy of Nicholas Arndstein.
- (4) Petition for the appointment of a Receiver.

- (5) Order appointing Receiver.
- (6) Petition and Order for the examination of Nicholas Arndstein and other witnesses.
- (7) Petition and Order for the examination of Nicholas Cohen and others.
- (8) Affidavit in lieu of schedules.
- (9) Schedules.
- (10) Testimony of Jules W. Arndstein, of Irving Gluck, of Joseph Gluck, of Rudolf Bunora, of David W. Sullivan, of Norman S. Bowles, of W. W. Easterday, of David F. Browder, of Fanny Brice, of William E. Washer, of Eugene F. McGee, and of William J. Fallon.
- (11) Order of Judge A. N. Hand, dated September 1, 1920, directing the bankrupt to answer questions together with the papers in support of the motion and two opinions of the Court in connection therewith.
- (12) Order of Judge Manton denying appeal from the Order of Judge A. N. Hand, with motion papers in support thereof and the opinion of the Court in connection therewith.
- (13) Petition for Writ of Habeas Corpus, filed with Judge Manton and the orders entered denying the writ with the opinion of the Court in connection therewith.
- (14) Petition for Writ of Habeas Corpus filed with Judge Hough with the Court's opinion, (15) The opinion of the Supreme Court of the U. S. reversing the order of Sept. 20, 1920, and the memorandum of opinion of the Supreme Court of the United States dated Sept. 20, 1920.
- 1493 (16) The order of Judge Mayer, dated March 24, 1921, making the judgment of the Supreme Court of the United States, the Judgment of the United States District Court for the Southern District of New York.
- (17) The opinion of Judge A. N. Hand sustaining the writ of Habeas Corpus,

It is ordered, that the said writ be and the same hereby is sustained and it is

Further ordered that the said petitioner be and he hereby is paroled in the custody of his counsel William J. Fallon, Esq., pending the hearing and determination of the appeal from this order to the Supreme Court of the United States, and it is

Further ordered that the said petitioner be and he hereby is given leave to apply at the foot of this order for his discharge from the custody of the United States Marshal and for such other and further relief as he may be advised he is entitled to, and it is

Further ordered, that the order entered herein August 2, 1921 be and the same hereby is vacated.

AUGUSTUS N. HAND,
U. S. D. J.

Affidt. of service attached.

U. S. District Court, S. D. of N. Y. Filed Oct. 31, 1921.

1494 United States District Court for the Southern District of New York.

JULES W. ARNDSTEIN, Respondent,

against

THOMAS D. MCCARTHY, United States Marshal for the Southern District of New York, Appellant.

Assignment of Errors.

Now comes the Appellant in the above entitled cause and files the following Assignment of Errors upon which he will rely upon his prosecution of the appeal in the above entitled cause from the order and judgment of this court filed in the office of the clerk of this court on October 31, 1921.

1. That the court erred in sustaining the writ of habeas corpus and paroling the petitioner in the custody of his counsel pending appeal and in granting him leave to apply for his discharge.

2. That the court erred in holding that the petitioner was restrained of his liberty in violation of his constitutional rights.

3. That the court erred in holding that the order of the U. S. District Court, filed September 7, 1920, directing the petitioner to answer certain questions set forth in certain schedules of questions marked "A" to "E" inclusive, annexed to the papers on which the said order was made, violated the constitutional rights of the petitioner.

4. That the court erred in holding that the petitioner, upon his examination under Sect. 21a of the Bankruptcy Act, was at
1495 liberty to cease disclosures about his property, even though some disclosures had been made, whenever he had any just ground to believe that his answers might tend to incriminate him.

5. That the court erred in holding that the denials contained in the bankruptcy schedules filed by the petitioner and the testimony given by the petitioner on his examination under Sect. 21a of the Bankruptcy Act, taken together, did not constitute such a voluntary disclosure of the petitioner's financial condition as to terminate his privilege.

6. That the court erred in holding that a bankrupt who does not testify in his own behalf on his examination under Sect. 21a of the Bankruptcy Act is at liberty to cease disclosures about his property,

even though some have been made, whenever he has any just ground to believe that his answers may tend to incriminate him.

7. That the court erred in holding that the petitioner was privileged to refuse to answer questions concerning his aliases, his travels, his correspondence and his association with other named persons and that as to each question he had just ground to believe that the answer might tend to incriminate him.

8. That the court erred in holding that the order of the U. S. District Court filed September 7, 1920, directing the petitioner to answer certain questions put to him upon an examination under Sect. 21a of the Bankruptcy Act and set forth in certain schedules of questions marked "A" to "E" inclusive, annexed to the papers on which the said order was made, could not be sustained as to any of the questions which the petitioner refused to answer.

9. That the court erred in holding that the petitioner, who 1496 had not appealed from the order of the court filed September

7, 1920, directing him to answer certain questions set out in the schedules of questions annexed to the papers upon which the said order was made, nor from the order of the court dated September 14, 1920, adjudging him in contempt for failure to answer these questions, was entitled to be discharged upon a writ of habeas corpus so long as he left unanswered one or more of the said questions not incriminating in character.

10. That the court erred in holding that the petitioner, who had not appealed from the order of the court filed September 7, 1920 directing him to answer certain questions set out in the schedules of questions annexed to the papers upon which the said order was made, nor from the order of the court dated September 14, 1920 adjudging him in contempt for failure to answer these questions, was entitled to his discharge upon a writ of habeas corpus so long as he left unanswered any questions as to which he had waived his privilege against self-incrimination.

Wherefore, the appellant prays that said decree be reversed and that said District Court for the Southern District of New York be ordered to enter a decree reversing the decision of the lower court in said cause.

Dated New York, November 14, 1921.

SAUL S. MYERS,
Attorney for Appellant.

No. 60 Wall Street, New York City.

U. S. District Court, S. D. of N. Y. Filed Nov. 14, 1921.

1497 United States District Court for the Southern District of New York.

JULES W. ARNDSTEIN, Respondent.

against

THOMAS MCCARTHY, United States Marshal for the Southern District of New York, Appellant.

Application for Leave to Appeal.

To Hon. Augustus N. Hand, District Judge:

The above named Thomas D. McCarthy, United States Marshal for the Southern District of New York, feeling aggrieved by the order and judgment rendered and entered in the above entitled cause on October 31, 1921, does hereby appeal from said order and judgment to the Supreme Court of the United States, for the reasons set forth in the Assignment of Errors filed herewith; and he prays that his appeal be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings and document upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States, sitting at Washington, under the rules of such court in such cases made and provided.

And your petitioner further prays that the proper order relating to the security to be required of him, be made.

SAUL S. MYERS,
Atty. for Petitioner.

The foregoing appeal prayed for is hereby allowed.

Dated, November 14, 1921.

AUGUSTUS N. HAND,
U. S. District Judge.

U. S. District Court, S. D. of N. Y. Filed Nov. 14, 1921.

1498

Bond.

Bond of National Surety Company for \$250 approved by Kno. C. Knox, D. J., filed Nov. 25, 1921.

1499 At a Stated Term of the United States District Court for the Southern District of New York, Held at the Court House, in the Borough of Manhattan, City of New York, on December 6, 1921.

Present: Hon. A. N. Hand, District Judge.

JULES W. ARNDSTEIN, Respondent,
against

THOMAS D. MCCARTHY, United States Marshal for the Southern District of New York, Appellant.

Order Extending Time to Docket, Print and File Record on Appeal.

On reading and filing the annexed stipulation and on motion of Saul S. Myers, attorney for Hon. Henry A. Gildersleeve, trustee in bankruptcy herein, it is hereby

Ordered that the time of the appellant within which to docket, print and file the record on appeal from the order of Hon. A. N. Hand, dated October 31st, 1921 sustaining the writ of habeas corpus herein be and the same hereby is extended thirty (30) days from the date hereof and that certification of the printed record be waived, and it is further

Ordered that the record on appeal shall consist of the following, to wit: the order appealed from, the papers specified in the seventeen sub-divisions of the said order, application for leave to appeal, the assignment of errors, citation and bond on appeal.

Dated New York, December 6, 1921.

AUGUSTUS N. HAND,
District Judge.

1500 United States District Court, Southern District of New York.

JULES W. ARNDSTEIN, Respondent,
against

THOMAS D. MCCARTHY, United States Marshal for the Southern District of New York, Appellant.

It is hereby stipulated that the appellant's time within which to docket, print and file the record on appeal from the order of Hon. A. N. Hand, dated October 31st, 1921 sustaining writ of habeas corpus be extended thirty days from date and that certification of the printed record be waived.

It is further stipulated that the record on appeal shall consist of the following:

1. The order appealed from,
2. The papers specified in the seventeen subdivisions of the said order,

3. Application for leave to appeal,
4. The Assignment of Errors,
5. Citation,
6. Bond on appeal.

Dated, New York, December 1st, 1921.

SAUL S. MYERS,
Attorney for Appellant.
WILLIAM J. FALLON,
Attorney for Respondent.

U. S. District Court S. D. of N. Y. Filed Dec. 7, 1921.

1501 At a Stated Term of the United States District Court for the Southern District of New York, Held at the Court House, in the Borough of Manhattan, City of New York, on March 6th, 1922.

Present: Hon. A. N. Hand, District Judge.

JULES W. ARNDSTEIN, Respondent,
against

THOMAS D. MCCARTHY, United States Marshal for the Southern District of New York, Appellant.

Order Extending Time to Docket the Case and File the Record on Appeal.

On reading and filing the annexed affidavit of Saul S. Myers, sworn to March 6th, 1922 and on motion of Saul S. Myers, attorney for Hon. Henry A. Gildersleeve, the trustee in bankruptcy herein, it is hereby

Ordered that the time of the appellant within which to docket the case and file the record on appeal from the order of Hon. A. N. Hand, dated October 31st, 1921, sustaining the writ of habeas corpus herein, be and the same hereby is extended thirty days (30) from the date hereof.

AUGUSTUS N. HAND,
District Judge.

Dated, New York, March 6th, 1922.

Filed, March 7, 1922, U. S. Dist. Court, S. D. of N. Y.

1502 UNITED STATES OF AMERICA,
Southern District of New York, ss:

(Bankruptcy. No. 27525.)

JULES W. ARNDSTEIN, Respondent,

vs.

THOMAS D. MCCARTHY, U. S. Marshal, S. D. of N. Y.

Writ of Habeas Corpus.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of part four of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this fourth day of April, in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the said United States the one hundred and forty-sixth.

[Seal of District Court of the United States, Southern District of N. Y.]

ALEX GILCHRIST, JR.,
Clerk.

1503 UNITED STATES OF AMERICA, ss:

To Fellon & McGee, Esqs., Attorneys for Jules W. Arndstein, and Alexander Gilchrist, Jr., Esq., Clerk of the United States District Court for the Southern District of New York:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to an appeal filed and entered in the clerk's office of the District Court of the United States for the Southern District of New York, wherein Thomas D. McCarthy, United States Marshal for the Southern District of New York, is appellant and Jules W. Arndstein is appellee, to show cause, if any there be, why the order and judgment rendered against the said appellant as in said order allowing appeal mentioned should not be corrected and why justice should not be done to the parties in that behalf.

Given under my hand at the City of New York, this 14th day of November, 1921.

AUGUSTUS N. HAND,
U. S. District Judge.

1504 STATE OF ———,
County of ———, ss:

———, being duly sworn deposes and says: That — is the — named in the foregoing —. That — has read the same and knows the contents thereof; that the same is true of — own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters — believes it to be true.

Sworn to before me this — day of —, 19—.

Notary Public, N. Y. Co.

United States District Court, Southern Dist. of New York.

JULES W. ARNDSTEIN, Respondent,
against

THOMAS D. MCCARTHY, United States Marshall for the Southern District of New York, Appellant.

UNITED STATES OF AMERICA,
State of New York,
County of New York, ss:

Howard Myers being duly sworn, says that he is a clerk in the office of Saul S. Myers the Appellant's attorneys herein and that on the 14th day of Nov. 1921 he served a copy of the annexed Citation upon Fallon & McGee, Esqs., the attorney- for the Respondent by depositing the same, enclosed in a sealed wrapper directed to said attorney in his office letter box at the door of his office, No. 152 West 42 street, in the city of New York, there being no person in charge of his office. That said service was made between the hours of nine and six o'clock.

HOWARD MYERS.

Sworn to before me this 15 day of November, 1921.

JOS. R. GUERIN,
Notary Public, N. Y. Co., #501.

1505 [Endorsed:] 27525. Bankruptcy Vol. 59. No. 27525. United States District Court for the Southern District of New York. 77. Jules W. Arndstein, Respondent, against Thomas D. McCarty, United States Marshal for the Southern District of New York, Appellant. Citation. Saul S. Myers, Attorney for U. S. Marshal, 60 Wall Street, New York. U. S. District Court, S. D. of N. Y. Filed Nov. 14, 1921.

Endorsed on cover: File No. 28,954. S. New York D. C. U. S. Term No. 404. Thomas D. McCarthy, United States marshal for the Southern District of New York, appellant, vs. Jules W. Arndstein. Filed May 27th, 1922. File No. 28,954.

In the Supreme Court of the United States.

OCTOBER TERM, 1922.

THOMAS D. MCCARTHY, UNITED STATES Marshal for the Southern District of New York, Appellant, v. JULES W. ARNDSTEIN.	}	No. 404.
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*APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.*

MOTION TO ADVANCE.

Comes now the Solicitor General and moves the Court to advance this case for hearing at an early date during the present term.

Having been adjudged an involuntary bankrupt, Petitioner (Appellee here), without objecting on the ground of self-incrimination, filed schedules under oath which purported to show his assets and liabilities. Upon examination as to these schedules under section 21 (a) of the Bankruptcy Act he refused to answer numerous questions on the ground that, as such answers might incriminate him, he was relieved from making answer by the Fifth Amendment to the Constitution. Judge Hand directed him

to answer said questions, and, upon refusal, he was adjudged in contempt and committed to jail.

He thereupon applied for a writ of habeas corpus to Circuit Judge Manton, sitting in the District Court, who denied the application; and then to Circuit Judge Hough, who also denied the application. On appeal from the order of Judge Manton denying the application this Court reversed said order. *Arndstein v. McCarthy*, 254 U. S. 71, 379. The District Court thereupon discharged the Petitioner upon habeas corpus, from which judgment the Marshal appeals to this Court.

On the prior appeal this Court held that the Petitioner was entitled to the writ and that the propriety of his detention could be determined after a return to the writ had been made; that as the schedules did not show that a crime had been committed the mere filing of them did not constitute a waiver of the bankrupt's constitutional right to stop short whenever he could fairly claim that to answer might tend to incriminate him. But the questions answered by the bankrupt, and the return of the Marshal to the writ of habeas corpus, which denied much of the matter contained in the original petition and set up new facts not contained therein, were not before the Court on that appeal.

The question now presented, therefore, is whether, by filing schedules and answering certain questions regarding them, the bankrupt waived his constitutional privilege as to self-incrimination, and thereby opened the door to unlimited cross-examination.

Since the decision of Judge Hand, July 7, 1921, it has been impossible to elicit testimony from bankrupts in a number of important cases. It is therefore submitted that the character of the question involved, the importance of the case to the general public, and the necessity of proper administration of the Bankruptcy laws, warrant an early hearing of this case.

This application is made on behalf of the Appellant and at the instance of counsel for the Trustee in Bankruptcy.

Notice of this motion has been served on opposing counsel.

JAMES M. BECK,
Solicitor General.

JANUARY, 1923.

○

FILE COPY

FILED

MAR 27 1923

WM. R. STANSBUR
CLERK

Supreme Court of the United States

OCTOBER TERM, 1922.

No. 404.

**THOMAS D. McCARTHY, UNITED STATES
MARSHAL FOR THE SOUTHERN DIS-
TRICT OF NEW YORK,**

Appellant,

VS.

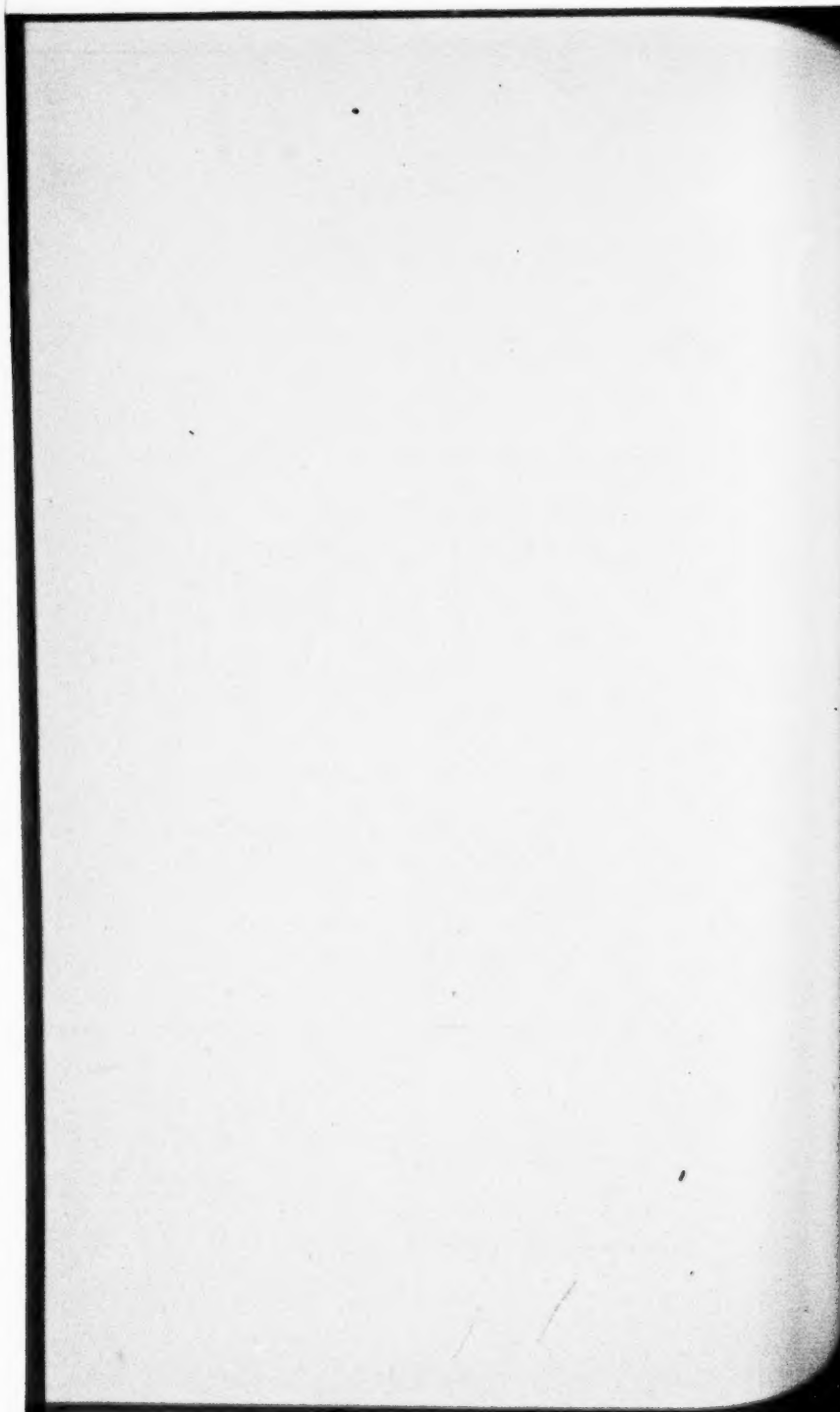
JULES W. ARNDSTEIN.

Respondent.

BRIEF ON BEHALF OF APPELLANT.

JAMES M. BECK,
Solicitor-General,
for Appellant.

SAUL S. MYERS, }
WALTER H. POLLAK, } **Special Assistants**
to Attorney-General.



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FIRST POINT.—Arndstein did not appeal from the order adjudging him in contempt, but attacked it collaterally by writ of *habeas corpus*. The improper refusal to answer a single question—improper because the claim that the answer would incriminate the witness was obviously made in bad faith or because no possible answer to the question could have had that effect, or because the privilege against self-incrimination had been waived as to that particular topic—is sufficient to support the contempt order against attack by *habeas corpus*. The petitioner had the burden of showing that his refusals to answer were justified in every instance 10

SECOND POINT.—The issue of waiver on the present record which includes the oral testimony of Arndstein, is wholly different from the issue in *Arndstein vs. McCarthy* (254 U. S., 71), a case decided upon the schedules “standing alone.” The settled principles of the subject are that a witness who does testify concerning matters that might incriminate him, waives his privilege to refuse further answers; and this is true alike where the testimony takes the form of “denials” and where it takes the form of “partial disclosures” 13

THIRD POINT.—By the testimony which the bankrupt voluntarily gave on his examination concerning his property and assets, his names and his travels, he waived the right to assert his constitutional privilege against further questions upon the same subjects, or, indeed, upon the “criminating fact as a whole” 30

FOURTH POINT.—The court, not the witness, is the judge whether a possibility of incrimination exists. It is plain that some of the answers Arndstein refused to give could not have incriminated him. This is apparent in some instances from the character of the questions themselves; in some instances from the answers given to other questions 41

FIFTH POINT.—The record shows that Arndstein's claims—and particularly his final claims—of privilege were not made in good faith. This appears plainly by comparison of his apparent willingness to testify on the first day of the hearing with his positive refusal to give any testimony whatever on the last day; by his gradual yielding to counsel's instructions to claim privilege against many questions which at first he was willing to answer; and by answers and admissions contained in his testimony which plainly contradict his final claim of privilege to the same or similar questions 52

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SECTION

CHAPTER I
OF THE NATURE AND EXTENT OF THE
ARTS AND MANUFACTURES
IN THE KINGDOM OF GREAT BRITAIN
AND IRELAND

ARTS

THE ARTS AND MANUFACTURES
OF GREAT BRITAIN AND IRELAND
ARE OF GREAT IMPORTANCE
TO THE NATION
AND TO THE WORLD
IN GENERAL
AND TO THE
ECONOMY OF THE
NATION IN PARTICULAR
AND TO THE
WELL-BEING OF THE
PEOPLE IN GENERAL
AND TO THE
GLORY OF THE
NATION IN PARTICULAR

MANUFACTURES

THE MANUFACTURES
OF GREAT BRITAIN AND IRELAND
ARE OF GREAT IMPORTANCE
TO THE NATION
AND TO THE WORLD
IN GENERAL
AND TO THE
ECONOMY OF THE
NATION IN PARTICULAR
AND TO THE
WELL-BEING OF THE
PEOPLE IN GENERAL
AND TO THE
GLORY OF THE
NATION IN PARTICULAR

Supreme Court of the United States

THOMAS D. MCCARTHY, United
States Marshal for the South-
ern District of New York,
Appellant,

against

JULES W. ARNDSTEIN,
Respondent.

BRIEF FOR APPELLANT.

Statement of the Case.

The United States Marshal for the Southern District of New York appeals from an order sustaining a writ of *habeas corpus* and discharging the petitioner. By the writ, petitioner attacked the validity of an order adjudging him in contempt of court for refusal to answer certain questions upon his examination in bankruptcy—questions which the Court had ordered him to answer.

Outline of Facts; Arndstein's Examination in Bankruptcy and Commitment for Contempt.

On February 19, 1920, an involuntary petition in bankruptcy was filed against Jules W. Arndstein, under the name of Nicholas Arnstein (pages

6 and 7)*. Arndstein had left New York City about February 10, 1920 (page 32). His whereabouts remained unknown until May 15th, when he returned to New York (page 33) and presented himself for examination before the Commissioner in Bankruptcy (page 29). The Commissioner, at the beginning of his examination, warned him that he need not answer any question that would "either tend to incriminate or degrade you" (page 30). On the examination held on this day, he answered freely many questions, including all those asked him concerning his own and his wife's relatives (pages 33-5, 37-42), his bank accounts (pages 36, 39-40, 42) and his safe deposit boxes (pages 36, 39-40, 42); and he testified that "since Washington's Birthday this year" he had had no property in his possession (page 49), except \$500 which he got from his wife (page 49). He stated that between February 12th and May 15th he had been "on the road" (page 32), "traveling through the United States" (page 50). As to his possession of stocks and bonds, he testified emphatically:

"I never had any in my life. I never owned a share of stock in my life. I never even saw a genuine certificate in my life. I never possessed one in my life, any negotiable stock" (page 37).

In answering questions along these lines, however, he encountered strenuous objection and interference on the part of his own counsel whose un-

* We refer in this brief to the pages of the printed record, as numbered at the top.

willingness to permit him to give answers on any of these subjects was plainly evident. The record shows counsel's apparent attempts to tell the witness how to answer (pages 31, 32, 37); counsel's request "Now, I ask your Honor to instruct the witness that he may claim his privilege to that question" (page 50); and counsel's open protest that the witness's answers to "all these questions" (about bank accounts, safe deposit boxes and stocks and bonds, pages 35-7) were being given against counsel's advice (page 37).

Gradually the witness fell into the way of accepting his counsel's judgment, claiming that the answers to later questions concerning property and assets would incriminate him (page 47), and that the answers to all questions as to his whereabouts before he reappeared at Columbus Circle in New York City at 9 o'clock on the morning of May 15th, would either degrade (page 51), or incriminate him (pages 61-63).

On the second day of the hearing the bankrupt testified further in regard to his property [after objecting at the outset, "I cannot answer that, for the same reason"—page 89], first, that he *could not remember* (pages 89-90) how long before the filing of the petition in bankruptcy he had "any property of any nature, kind or description" in his possession or under his control, and later that "for a period of at least seven months immediately preceding the filing of the petition in bankruptcy in this proceeding" he did not have "any property of any nature, kind or description" (pages 91-92). To the question whether he had had "any property of any nature, kind or description *since* the filing of the petition in bankruptcy in this proceeding"

(page 92), he testified—again after refusing at first “on the ground that it might incriminate me”—“Yes, I have had a little money from time to time” (page 92). After he had answered “No, sir” to the question “Have you any automobiles now, either in your possession or under your control?”, his testimony along this line was cut short by his counsel’s peremptory instruction, “*Now, don’t answer that*” (page 94). So also the inquiry as to his acquaintance with Nick Cohen (page 75): after the question “Do you know Nick Cohen?” he was asked “Will you answer that?” and replied “Yes, sir.” His counsel interposed with the instruction “*No, you refuse to answer.*” Thereafter he did refuse to answer all questions as to acquaintances and most questions as to assets on the ground that the answers would tend to incriminate him (see pages 94-113).

On the third day he was asked:

“Aside from the \$500 you speak of, have you had any money or property in your possession, or held by you, since the filing of the bankruptcy petition,”

his answer was:

“I answered that at the last hearing, sir.”

His counsel, however, stated:

“We refuse to answer,”

and again

“He refuses to answer.”

The bankrupt thereupon acquiesced in this direction of counsel and answered the further question:

"On what ground?"

with a claim of privilege—

"The same ground, sir; tend to incriminate me" (page 131).

Upon an order to show cause dated June 1, 1920 (pages 740-1), the list of questions to which the attorney for the trustee in bankruptcy had failed to secure answers upon these hearings, and all other disputed questions (pages 751-769) were submitted to Judge Augustus Hand, to determine whether the bankrupt had already committed contempt of court by his refusals to answer, and further to determine whether he should be held to answer all these questions.*

Judge Hand denied the motion to punish for contempt (Opinion of June 28, 1920; pages 771-2). He decided however (Opinion of August 10, 1920, pages 772-3) that the bankrupt should be directed to answer the questions—with a few carefully stated exceptions (page 773)—on the ground that, on June 10th, after the order to show cause had been obtained, the bankrupt had filed schedules of his property without claiming privilege, and had thereby become subject to examination in regard

*Schedule A (page 751) contains questions which the Commissioner directed the bankrupt to answer and which he refused to answer; Schedule B (752) a question which the Commissioner asked the bankrupt and which he refused to answer; Schedule C (752), questions put by counsel for the trustee which the bankrupt refused to answer; Schedules D (756) and E (766), questions put by counsel for the trustee objection to which was sustained by the Commissioner.

to the statements contained in the schedules. Accordingly Judge Hand signed an order directing the bankrupt to answer these questions (Order of September 1, 1920; pages 774-5).

Thereafter, on September 24th (page 150) the examination was resumed. On this occasion, counsel for the bankrupt at first offered to stipulate that

"the questions called for in the order were asked, and that the bankrupt refused to answer, asserting his Constitutional privilege and that he was ordered and directed to answer them, and that he refused to answer them" (page 150).

This offer was rejected and the questions in Schedule O were put to the bankrupt. He refused to answer each one (pages 150-155).

At the close of this list of questions in Schedule C, the Commissioner, referring to all the schedules inquired:

"I presume you will refuse to answer every question that is asked, and that you decline to answer on the ground that it will tend to incriminate or degrade you?"

The bankrupt replied:

"Yes, sir" (page 155).

Upon the same day, Judge Manton signed an order declaring the bankrupt in contempt (page 776).

Application for Writ of Habeas Corpus Denied by District Court; Opinions of this Court on Reversal and upon Application for Re-argument.

On September 20th, the District Court denied a writ of *habeas corpus* on the ground, among others, that the bankrupt by filing schedules had waived his right to refuse to answer about his property (pages 782-783, Opinion, pages 780-782). Upon appeal to this Court, this order was reversed on the ground that the "mere filing" of the schedules did not constitute a waiver of the constitutional privilege. "Standing alone they did not amount to an admission of guilt or furnish clear proof of crime." (Opinion, *Arndstein vs. McCarthy*, page 787, reported 254 U. S., 71.) It was accordingly directed that the writ issue.

On December 20, 1920, this Court denied a motion by the trustee in bankruptcy for permission to intervene and for reargument of the appeal (page 789, reported 254 U. S., 379). The opinion denying that motion characterized the holding that the writ should issue as in effect a holding upon demurrer, and pointed out that it merely required "the trial court to accept our decision upon the point of law, to issue the writ and then to proceed as usual." "*If proper reasons exist for holding the prisoner not shown by the petition neither our opinion nor mandate prevents them from being set up in the return and duly considered*" (page 789).

Order Sustaining Writ and Discharging Petitioner.

Thereafter, on October 31, 1921, upon a return (page 1) which set forth all the testimony and proceedings in bankruptcy (page 4), Judge Augustus Hand made the order sustaining the writ and discharging the petitioner (page 793). From that order this appeal is taken (page 797). Judge Hand, in his opinion (pages 791-3) explained that he made the order in deference to the ruling of this court, declaring himself unable to distinguish the question of waiver presented by the filing of the schedules from that presented by the bankrupt's testimony, and expressly leaving it to this court to differentiate the right to the issuance of the writ from the right to release upon the hearing under the writ (page 793).

Principal Questions Presented.

Appellant rests his appeal upon the following contentions:

(1) Attack upon the contempt order by *habeas corpus* must fail if the petitioner's refusals to answer were unjustified as to even one question. Partial error in the contempt order will not avail the petitioner.

(2) The decision of this Court in *Arndstein vs. McCarthy* (254 U. S., 71) was mistakenly applied by the District Judge. That decision did not disturb the well-established rule of law that a witness who gives oral testimony upon a specific topic

—whether that testimony consists of denials or partial disclosures—waives his constitutional privilege to refuse to answer further questions on the same topic.

(3) By denials and partial disclosures voluntarily made by Arndstein concerning his property, his names and his travels, he waived his privilege to refuse to answer questions subsequently asked him on these same topics.

(4) Arndstein's claim that his answers would incriminate him was in certain instances manifestly without merit. Sometimes this appears from the character of the questions; sometimes from his other testimony.

(5) The record shows Arndstein's whole claim of constitutional privilege was vitiated by bad faith, and did not rest upon a sincere belief that he could not safely answer any of the 450 questions which he was held in contempt for refusing to answer.

Specification of Errors.

All these questions are presented by the assignments of error, especially the assignments numbered 2 to 10 inclusive, upon which the Marshal rests his appeal. Without setting them forth at length we beg leave to refer the court to these assignments, which appear in the record at pages 795-796.

POINT I.

Arndstein did not appeal from the order adjudging him in contempt, but attacked it collaterally by writ of habeas corpus. An improper refusal to answer a single question—improper because the claim that the answer would incriminate was obviously made in bad faith, or because no possible answer to the question could have had that effect or because the privilege against self-incrimination had been waived as to that particular topic—is sufficient to support the contempt order against attack by habeas corpus. The petitioner had the burden of showing that his refusals to answer were justified in every instance.

The present application is not an appeal from the order directing Arndstein to answer questions or from the order adjudging Arndstein in contempt. Arndstein took no such appeal. He attacked the contempt order by *habeas corpus*. The issue accordingly is not whether the order adjudging him in contempt was in all respects correct, but whether it had any validity. One who seeks relief from an order or judgment by writ of *habeas corpus*, cannot succeed unless the order or judgment is void. Partial error affords no ground for relief.

“Under a writ of *habeas corpus* the inquiry is addressed not to errors, but to the question

whether the proceeding and the judgment rendered therein are, for any reason, nullities, and unless it is affirmatively shown that the judgment or sentence, under which the petitioner is confined, is void, he is not entitled to his discharge" (*United States vs. Pridgeon*, 153 U. S., 48, 62-63).

Hale vs. Henkel, 201 U. S., 43;

In re Swan, 150 U. S., 637;

Ex parte Davis, 112 Fed., 139;

In re Rogers, 129 Cal., 468.

The principle was applied to the instant subject in *Hale vs. Henkel* (*supra*): An order dismissing a writ of *habeas corpus* was affirmed by this court on the ground that the contempt order under review was justified by the witness's refusal to answer questions before the grand jury, although his disobedience of a subpoena requiring him to produce books and documents, included in the same contempt order, was held justifiable resistance to "an unreasonable search and seizure." "*But this objection,*" said Mr. Justice Brown, in concluding his opinion, "*does not go to the validity of the order remanding the petitioner, which is, therefore, affirmed*" (201 U. S. at page 77).

In *In re Rogers* (*supra*) the witness's privilege against self-incrimination was invoked by him in support of eleven refusals to answer. (The number in the instant case is about 450.) The Supreme Court of California, finding one of these refusals unjustified, declared it unnecessary even to consider the rest and said:

"It appears, therefore, that as to at least one interrogatory (*and this inquiry need go no further*) the witness' refusal to answer was not justified in law, and that, therefore, he was properly adjudged to be in contempt (129 Cal. at page 471; italics ours).

The contempt order must then stand against this attack by writ of *habeas corpus* unless all the questions which Arndstein refused to answer were improper questions. And the burden of showing their impropriety is upon Arndstein (*McGorray vs. Sutter*, 80 Ohio State, 400). It is for the "petitioner" to show "affirmatively" that he is held not under a partially erroneous, but under a "void" order (*U. S. vs. Pridgeon, supra*).

In the instant case (although the burden is not upon us), we are prepared to show that many of the refusals were under the settled principles of the subject improper.

Many questions which Arndstein refused to answer were in their very nature harmless or were shown to be harmless by answers given to related questions; his evident bad faith colored and vitiated his whole claim of privilege; and, even had it been asserted in good faith, Arndstein as matter of law waived his privilege in respect to many topics by the voluntary giving of testimony favorable to himself.

POINT II.

The issue of waiver on the present record which includes the oral testimony of Arndstein, is wholly different from the issue in *Arndstein vs. McCarthy* (254 U. S., 71), a case decided upon the schedules "standing alone." The settled principles of the subject are that a witness who does testify concerning matters that might incriminate him, waives his privilege to refuse further answers; and this is true alike where the testimony takes the form of "denials" and where it takes the form of "partial disclosures."

The only question which Judge Hand considered in making the order from which this appeal is taken, was the question of waiver. On that issue he believed the decision of this Court in *Arndstein vs. McCarthy* (254 U. S., 71, 379, see page 7 *supra*) to be a binding precedent, an insuperable barrier to the holding he evidently wished to make (page 793). (The reluctance with which Judge Hand sustained the writ is evident from the opinion [pages 791-3].) He noted that a different record was before him—that the whole of the bankrupt's examination was annexed to the return, whereas "only the questions and schedules in bankruptcy accompanied the petition" (page 792). But he found himself unable to see any difference in legal effect between the bankrupt's "denials and partial disclosures" in the course of his examina-

tion under oath, and those contained in the schedules (pages 24-7). In this situation, he had no choice but to discharge the prisoner, at the same time in terms recommending an appeal to this Court (page 793).

Highly important upon this appeal is the explicit recognition by the District Judge that Arndstein did make these partial disclosures and denials. His view of Arndstein's testimony—the only view (we shall see in Point III) that could be taken of that testimony—is a view in full accord with the construction of that testimony we urged below and shall later develop here. It was because of the District Court's view of the law—his conception of the *legal* effect of partial disclosures and denials in the light of the *Arndstein* decision—that his holding was in favor of the prisoner. We shall show that in his view of the law the learned District Judge erred. We shall see (1) that this Court's opinion in the *Arndstein* case was limited so as not to be an authority upon the instant question and (2) that the general principles of law forbid its application to the instant question.

(1) The decision of this Court in *Arndstein vs. McCarthy* (254 U. S., 71), was limited to the issue presented by the schedules "standing alone," and the question whether the petitioner should be discharged from custody was left open, to be determined upon the record annexed to the return.

The opinion in *Arndstein vs. McCarthy* (254 U. S., 71), was reconsidered by this Court upon a motion for a rehearing (254 U. S., 379; record, page 789); and at that time Mr. Justice McReynolds, who had written the earlier opinion, carefully—and

in precise accord with his former expression—re-stated the effect of that decision. He made it clear that in reversing the order denying the writ, this Court had decided nothing more than that “*the bankrupt did not waive his constitutional privilege merely by filing sworn schedules*”; and pointed out that the question whether the petitioner should be discharged remained still to be determined, and that it was open to respondent to set up in his return the facts upon which the contempt order issued.

The essential paragraph of the opinion on the rehearing is as follows:

“The court below heard the cause as upon demurrer* and held the petition for *habeas corpus* insufficient. Disagreeing with the result we concluded that the bankrupt did not waive his constitutional privilege merely by filing sworn schedules, that the petition was adequate, and that the writ should have issued. The mandate only requires the trial court to accept our decision upon the point of law, to issue the writ and then to proceed as usual. If the petition does not correctly set forth the facts, or if proper reasons exist for holding the prisoner not shown by the petition neither our opinion nor mandate prevents them from being set up in the return and duly considered” (page 789).

*The Court had to treat the application for the writ as “upon demurrer” under the statutory rule (Comp. Stat., Sec. 1283) that “the court, or justice or judge to whom such application is made shall forthwith award a writ of *habeas corpus*, unless it appears from the petition itself that the party is not entitled thereto.”

The only inference that can be drawn from this terse commentary by the author of the original opinion is that the question of waiver presented by the bankrupt's oral examination was not intended to be, and has not been, in any sense prejudged. The decision upon the schedules is, therefore, no precedent upon the issue of waiver presented by the testimony upon the examination. The two questions are different, and so we shall see, are the rules which apply to them.

(2) The question of waiver presented by the filing of the sworn schedules is altogether different from that presented by the bankrupt's oral testimony upon his examination. The point decided by this court on the earlier appeal—that the bankrupt did not waive his constitutional privilege merely by filing sworn schedules—offered no basis for concluding that he did not waive it by his "denials and partial disclosures," voluntarily given in the course of his examination on oath.

The District Judge's misconception of the effect of the *Arndstein* decision was the result of a practice into which the Federal Court in the Southern District of New York had fallen some years before. That court had treated the filing of schedules as a conclusive waiver of the bankrupt's constitutional privilege, and would not permit a bankrupt who had filed schedules to refuse upon his examination to answer questions about his property (*In re Tobias*, 215 Fed., 815; see the opinion of Judge A. N. Hand of August 10, page 772, and note the reference to "the rule in this district"). This practice was doubly erroneous.

(a) The prime misconception was as to the nature of schedules. This Court has expressly held that *schedules are not testimony*, and are not to be treated as such in cases involving constitutional privilege. (*Ensign vs. Pennsylvania*, 227 U. S., 592, and see *Schonfeld vs. U. S.*, 277 Fed., 934; certiorari denied 258 U. S., 623.)

Ensign vs. Pennsylvania decides that the immunity provision contained in Section 7 (9) of the Bankruptcy Act—"no *testimony* given by him shall be offered in evidence against him in any criminal proceeding"—is not violated by receiving in evidence upon a criminal prosecution in a State Court the schedules which defendant had filed in involuntary bankruptcy. *Schonfeld vs. United States* rules that schedules filed by an involuntary bankrupt are properly admitted in evidence upon his trial in a Federal Court for the offence of fraudulently concealing his property.

It was the habit induced by the erroneous practice of treating schedules and testimony as if they were one and the same thing that led Judge Hand to believe that he was confronted by a binding precedent in *Arndstein vs. McCarthy*.

(b) The schedules and the bankrupt's examination are not only different in character; they are distinct steps in the bankruptcy proceeding. Questions of waiver arising in the course of the examination must be decided solely on the testimony given by the bankrupt during the examination, without reference to anything that he may have said or done outside that part of the proceeding. This conclusion is in accord with the general rule that a witness who testifies at a preliminary hear-

ing or upon the first trial of an action, may still assert his privilege when called upon later to testify at a subsequent trial.

Emery vs. State, 101 Wis., 627;

Temple vs. Commonwealth, 75 Va., 892;

Overend vs. Superior Court, 131 Cal., 280;

Georgia R. & Bkg. Co. vs. Lybrend, 99 Ga., 421;

People vs. Cassidy, 213 N. Y., 388, pages 395-6;

State vs. Lloyd, 152 Wis., 24;

Abbott, Civil Jury Trials (4th Ed.), page 206;

Wigmore on Evidence, Vol. IV, Sec. 2276, pages 3158-9.

Judge Hand in reality fell into the same error in his decision upon the instant application as in his previous holding that the filing of schedules waived the bankrupt's privilege upon the examination (pages 772-773). Upon both occasions he overlooked the fact that schedules and examination are different things and distinct stages in the proceeding. Because he conceived of them as in effect the same thing, he erroneously—as this Court in *Arndstein vs. McCarthy* decided—held that statements in the schedules could waive a privilege upon the examination. Still because he thought of them as the same thing, he erroneously, in the instant case, concluded that since answers in the schedules did not constitute a waiver upon the examination, so answers upon the examination could not do so.

(3) The distinction which the District Court drew between a bankrupt testifying in his own behalf and a bankrupt called as a witness by the trustee is without foundation. There are no sides in a bankruptcy examination.

The District Court's initial mistake in assuming that the "denials and partial disclosures" in the course of the examination could have no different effect on the question of waiver from the denials and partial disclosures contained in the filed schedules, involved him in still further error:

"Apparently the Supreme Court has treated an examination of the bankrupt where he has been called as witness by the other side in a different way from an examination where he has taken the stand and testified in his own behalf. In the latter case under all the decisions the broadest cross examination is proper. The ruling in the Arndstein case would seem to indicate that where the bankrupt does not testify in his own behalf he is at liberty to cease disclosures about his property, even though some have been made, whenever there is any just ground to believe the answers may tend to incriminate him" (pages 792-3).

In the above the error (in addition to the general error of supposing that this court had passed upon the same question as is presented by the oral testimony of the bankrupt) is three-fold:

(a) There is no analogy between an examination in bankruptcy and an ordinary trial with opposed parties and issues defined by the pleadings. The

distinction between a witness testifying for his own side or for the other is in its relation to a bankruptcy examination an all but meaningless distinction. There are no sides in a bankruptcy examination. There is a mere inquiry to determine the facts concerning the bankrupt's property and its disposal. The true analogy would be to an examination before a committee of Congress or a trade commission or other mere fact-finding body. Of the nature of a bankruptcy examination Mr. Remington writes:

"No issue is involved. No fact is asserted on one side and denied on the other. No fact is to be proved or disproved. The examination is simply a general inquiry into the 'acts, conduct and property of the bankrupt,' the cause of his failure, the whereabouts of his property, the contracts relating to his business, and in short an examination into all matters and things of reasonable interest to the creditors; and, as a consequence, a great latitude of inquiry is permitted" (Vol. I [1st Ed.], page 923).

In accord are

In re Williams, 123 Fed., 321, 326;

In re Fiæn, 96 Fed., 748.

(b) Even if we assume, however, that any analogy exists between a bankruptcy proceeding and a litigated civil action—even if we could speak of the bankrupt as being called as a witness for the trustee,—he is a hostile witness. Such a witness can, of course, be subjected to the most searching examination by the counsel that calls him.

Ferrell vs. Prame, 206 Fed., 278 (C. C. A., 6th Cir.) ;
People vs. Sexton, 187 N. Y., 495 ;
Symes vs. Fletcher, 115 Atl., 502 (Vt., 1921) ;
Dumas vs. Clayton, 32 App. D. C., 566 ;
North Am. Restaurant vs. McElligott, 227 Ill., 317 ;
Jones, Evidence, Sec. 817.

It is "manifestly proper" for counsel, as was stated in a late case (*Symes vs. Fletcher*, supra) to question a hostile witness called by him as if "in cross examination," probing his initial denials, and exploring and amplifying his partial disclosures.

(c) These two errors or either of them would have been alone sufficient to vitiate Judge Hand's conclusion. They did not, however, stand alone, but seem to have contributed to still another misconception—the erroneous idea that in *Arndstein vs. McCarthy*, this Court intended to or did treat the "examination of the bankrupt where he has been called as a witness by the other side in a different way from an examination where he has taken the stand and testified in his own behalf." We do not understand that any Court has ever proposed any such distinction—with respect to the constitutional privilege against self-incrimination—between a party to a civil action who takes the stand in his own behalf and a party to a civil action who is called as a witness for the other side, or ever attempted to distinguish—with respect to the privilege against self-incrimination—the case of a witness who is a party from the case of any other witness in a civil suit. (See *Wigmore*, Vol. IV, Sec. 2268 (3), page 3134.) Except in the peculiar case of a defendant in a criminal prosecution—peculiar

because he and he only has the option of refusing to become a witness at all—the mere act of taking the stand is never in itself a waiver of the constitutional privilege. Any ordinary witness, having taken the stand, may still refuse to answer about incriminating matters, and any witness by answering about them waives his privilege and must give further answers. The sole test, in the case of any ordinary witness, we shall see, is the content of the testimony he has already given.

(4) A witness who without claiming privilege gives testimony on a certain topic waives his privilege in relation thereto, and cannot refuse to answer further questions.

The privilege against self-incrimination is a privilege against being *compelled* to be a witness against one's self (Fifth Amendment). A witness who voluntarily testifies is not compelled. In a case which this Court in *Hale vs. Henkel* (201 U. S., at page 63) cited with approval as an authority upon the general subject, it was said (*U. S. vs. Kimball*, 117 Fed., 156, 163) :

"The provision means that no person shall be forced to be a witness against himself, against his free will. This does not mean that he may not be a witness against himself."

A witness may, of course, refuse to testify at all about incriminating matters. If he does testify, he cannot, however, stop in the middle. He cannot end his tale with a half-truth that in its effect may be the most insidious falsehood.

It has been repeatedly held that a witness who testifies without asserting his privilege has so far waived it that he cannot invoke it against more searching inquiries on the same subject.

- 24-7
- Ex parte Senior*, 37 Fla., 1, p. 267;
State vs. Fay, 43 Iowa, 651;
Foster vs. Pierce, 11 Cush., 437;
State vs. Nichols, 29 Minn., 357;
State vs. Foster, 23 N. H., 348;
Norfolk vs. Gaylord, 28 Conn., 309 (cited
in *Brown vs. Walker*, 161 U. S., page
597);
State vs. K., 4 N. H., 562 (cited in *Brown*
vs. Walker, 161 U. S., page 597);
Chamberlain vs. Willson, 12 Vt., 491
(cited in *Brown vs. Walker*, 161 U. S.,
page 597).

A witness, who upon an investigation of alleged illegal voting testifies that he cast his ballot for a particular candidate, can be required to answer questions concerning his birth, naturalization and registration (*Ex parte Senior, supra*); a witness who testifies that he does not recollect ever having sold brandy for the defendant, may be required to answer the question whether he had not on a particular occasion sold brandy to a particular person (*State vs. Foster, supra*); a witness who testifies that he knows who the father of a bastard is (*Foster vs. Pierce, supra*), or that he knows the complainant had intercourse with others than defendant about the time the child was begotten (*State vs. Nichols, supra*), or that he knows who disinterred a body (*State vs. K., supra*), cannot refuse to name himself as the guilty party; the defendant in a bastardy suit, who offers himself as a witness and testifies that he has not had intercourse with the mother within the year before the child was born, must submit to cross examination concerning this statement (*Norfolk vs. Gaylord,*

supra). The necessity of the principle is well stated in the *Gaylord* case:

"Under such circumstances, to have prohibited the inquiry would have enabled the witness, by his simple '*ipse dixit*' * * * to foreclose all inquiry of him in regard to it, and would thus have rendered his cross examination, justly regarded as one of the principal and most efficacious means provided by law for the ascertainment of the truth, a worthless form" (28 Conn., pages 313-4).

In *People vs. Cassidy* (213 N. Y., 388, 394), the New York Court of Appeals stated the rule and its reason as follows:

"A person cannot waive his privilege under the constitutional provisions and give testimony to his advantage, or the advantage of his friends, and at the same time and in the same proceeding assert his privilege and refuse to answer questions that are to his disadvantage or the disadvantage of his friends."

The cases we have analyzed are cases of flat application involving, as does the instant case, the situation of an "ordinary witness" (*Wigmore*, Vol. IV., Section 2276, page 3151). Essentially similar principles apply to the case of a defendant in a criminal prosecution who takes the stand in his own behalf, although in that particular case (as we have said, page 21, *supra*) the waiver is deduced not from the content of testimony, but from the fact of taking the stand. The rule of this court is that the criminal defendant can, like the

"ordinary witness" (*Fitzpatrick vs. U. S.*, 178 U. S., 304, 315), be cross examined as to every statement that he has made in his own behalf.

Fitzpatrick vs. U. S., *supra*;
Sawyer vs. U. S., 202 U. S., 150, 165;
Powers vs. U. S., 223 U. S., 303, 314, 315;
Spies vs. Illinois, 123 U. S., 131, 181;
U. S. vs. Mullaney, 32 Fed., 370 (Brewer, J.).

The Supreme Court of Maine in *State vs. Wentworth* (65 Me., 234, cited in *Brown vs. Walker*, 161 U. S., page 598, and *McAlister vs. Henkel*, 201 U. S., page 91), expressly analogizing the criminal defendant who takes the stand in his own behalf to the "ordinary witness," thus laid down the rule:

"If a witness state a fact he is bound to state all he knows about it, though in so doing he may expose himself to a criminal charge. In State vs. K., 4 N. H., 562, the witness said he knew the defendant was innocent of the offense charged, but he could not state how he knew that without implicating himself. The court said, 'If he chooses to testify to that fact, we shall permit the attorney general to inquire how the witness knows that fact, and compel him to answer the question.' If he discloses part, he must disclose the whole in relation to the subject matter about which he has answered in part. *Coburn vs. Odell*, 30 N. H., 540; *Foster vs. Pierce*, 11 Cush., 437. Answering truly in part with answers exonerative, he cannot stop midway, but must proceed, though his further answers may be self-criminative.

Answering falsely as to the subject matter, he is not to be exempt from cross examination because his answers to such cross examination would tend to show the falsity of those given on direct examination. If it were so, a preference would be accorded to falsehood rather than to truth" (page 243; italics ours).

(5) According to the great weight of American authority, the principle of waiver applies as well to partial disclosures as to denials.

The testimony upon which the claim of waiver is predicated is, as we have already noted, testimony both by way of denial and by way of partial disclosure. The proposition that a witness who denies guilt may then be cross examined (or if a hostile witness in effect cross examined) upon his denial, is undisputed everywhere. This result may indeed be put either upon the reasoning that where criminality is denied there can be no incrimination (compare *Mason vs. U. S.*, 244 U. S., at page 367) or upon the principle of waiver (compare *State vs. Foster*, 23 N. H., 348, *supra*; see also *State vs. Wentworth*, 65 Me., 234, *supra*).

With respect to partial disclosures there is some divergence between the English and the American rules. The English courts have finally held that a witness who discloses facts which tend to establish his guilt, may still refuse to answer further questions (*Regina vs. Garbett*, 2 C. & K., 474, 495, 1 Den. Cr. C. 236). The great majority of American courts have adopted a principle which Mr. Wigmore thus formulates. An "ordinary witness" waives his privilege (4 *Wigmore*, Section 2276, page 3151)

"by exercising his option of answering; this is conceded. Thus the only inquiry can be whether, by answering as to fact X, he has waived it for fact Y. If the two are related facts, parts of a whole fact forming a single relevant topic, then his waiver as to a part is a waiver as to the remaining parts * * *."

This Court, on the earlier appeal, did not choose and had no occasion to choose, between the English and American rules. Its holding was that the schedules "standing alone" were not "an admission of guilt" under either rule. It accordingly cited indifferently and in conjunction both *Regina vs. Garbett*, *supra*, and *Foster vs. People* (18 Mich., 266), a decision which Mr. Wigmore quotes (page 3151), because in it the American doctrine is so "aptly expounded." And this Court further cited, in the *Arndstein* case, its own earlier decision in *Brown vs. Walker* (161 U. S., 591). In that case, in turn, this Court cited with approval many of the State Court decisions mentioned here. The plain inclination of that opinion is toward the American rule.

Arndstein's testimony, upon which our waiver contention is based, mostly took the form of denials. For practical purposes, therefore, it makes little difference upon the present appeal whether this Court adopts the American or English rule, which differ, as we have seen, only with respect to partial disclosures. We submit, however, as a matter of legal theory, that the American rule is the true rule:

"A witness has no right under pretense of a claim of privilege, to prejudice a party by a one-sided or garbled narrative" (*Foster vs. People*, *supra*).

So almost all American courts of last resort have concluded (see the cases collected in *Mr. Wigmore's note*, pages 3152, 3153). On the other hand the English courts have been in admitted conflict concerning their own rule (compare *East vs. Chapman*, 2 C & P., 570, 572; *Dixon vs. Vale*, 1 C. & P., 278, 279 and note the discussion of the authorities in *King of the Two Sicilies vs. Willcox*, 1 Sim., N. S., 301, 320).

Least of all, we submit should this Court depart from the American rule in the precise case before it—a case involving the examination of a bankrupt. Upon the precise point that a bankrupt can be examined upon his partial disclosures the English and American courts have reached the same result though upon different theories. So strong is the policy in favor of the free examination of bankrupts that the English Parliament and courts (being of course, unconfined by constitutional restrictions) have withheld from a bankrupt any privilege against self-incrimination (4 Wigmore, section 2260; *In re Atherton*, L. R. [1912], 2 K. B., 251). "It may be noted," says Mr. Wigmore, "that in bankruptcy proceedings the English courts had apparently driven a coach-and-four through the privilege, long before the modern statute of 1883 had expressly nullified it" (pages 3119, 3120).

Precisely in point, as showing the true rule, applicable as well to partial disclosures as to denials, is *In re Bendheim* (180 Fed., 918). A bankrupt in that case had answered questions as to the amount and character of his goods in stock during a certain month and as to real estate owned by him at another time. In these circumstances, it was held that he could not refuse to answer

further questions on the same subject on the ground that his testimony might incriminate him when taken in connection with a financial statement he had made.

The principle of waiver is, as we have seen, a general one. Its application is for several reasons peculiarly cogent in Arndstein's precise case. For he was warned by the Commissioner of his privilege at the very outset, and the statement of his rights that the Commissioner made to Arndstein was even broader than the law of the subject justifies. A few seconds after he took the stand in the first day the Commissioner said to him (page 30): "Any question which is asked you, the answer thereto which in your judgment will tend to incriminate or degrade you, you can decline to answer, stating that you decline to answer upon the ground that it will either tend to incriminate or degrade you." (There is, of course, no constitutional privilege against self-degradation [*Brown vs. Walker*, 161 U. S., 591, 598].)

And a waiver of the constitutional privilege will be most readily predicated upon the testimony of a witness who, besides being warned of his rights, has the guidance of counsel—in this instance counsel both expert and zealous. (*U. S. vs. Kimball*, 117 Fed., 156, 166—a case cited with approval on the general subject in *Hale vs. Henkel*, 201 U. S., 43, 63.)

Arndstein might, then, if he had chosen, have refused to testify about incriminating matters at all. If, however, he did testify about such matters, the trustee's attorney had a right to test his denials and to develop his partial admissions. With the principles of law thus settled, we turn in our next point to the analysis of the disclosures and the denials themselves.

POINT III.

By the testimony which the bankrupt voluntarily gave on his examination concerning his property and assets, his names and his travels, he waived the right to assert his constitutional privilege against further questions upon the same subjects or, indeed upon the "criminating fact as a whole."

The questions which the bankrupt was, by the order of September 1st, directed to answer fall into the following categories: questions concerning his names; questions concerning his whereabouts between February and June, 1920; questions concerning his acquaintance with various persons, his knowledge of the names used by them, and their addresses, and his meetings with them; questions concerning communications between the bankrupt and various persons; and, last and most important, questions directly concerning the bankrupt's possession, receipt and disposition of property.

On September 14th, Arndstein refused to answer each and every question which he had been directed by this order to answer.

His specific refusals to answer questions read to him on that date (pages 150-155) were supplemented (page 155), as we know, by a general refusal to answer "every question that is asked" on the ground that it would incriminate and degrade him (page 155).

Yet he had testified concerning his property, his names and his travels without asserting his privilege against self-incrimination.

(1) Arndstein's denials of the ownership and possession of stocks and bonds compared with subsequent refusals to testify.

Concerning the ownership and possession of stocks and bonds he had sworn:

"Q. Have you any stocks or bonds now?

A. I never had any in my life. I never owned a share of stock in my life. I never even saw a genuine certificate in my life. I never possessed one in my life, any negotiable stock" (page 37).

* * * * *

"Q. Did you ever have any stocks or bonds in your possession or under your control, at any time during the past year?

A. I never owned a share of stock; I never had a share of stock that was good, to my knowledge, in my life.

Q. What do you mean by 'good'?

A. Well, anything that was negotiable.

Q. What?

A. Nothing negotiable.

Q. Did you ever have any that were not negotiable?

A. Yes; I bought some years ago.

Q. We are talking about the past twelve months.

A. No, sir.

Q. Have you had any stocks or bonds in your possession or under your control at any time during the past year?

A. I just answered that.

Q. No, I did not get the answer. (Question read.)

A. I answered that, I said no (pages 46-7).

* * * * *

Q. Have you had, Mr. Arndstein, any stocks or bonds during the past year, in your name or in your possession or under your control?

A. No, sir" (page 135).

Yet he *refused* to answer the following questions on this subject on the ground that they might incriminate and degrade him (see page 150) :

"Did you buy or sell any shares of stock or bonds at any time during the past year"? (page 152),

"Did you ever see any stocks or bonds during the past year, anywhere"? (page 152).

"Did you touch any stocks or bonds at any time, or place, within the past year"? (page 152).

and he *refused* to testify concerning his possession of specific shares of stock and bonds, a list of which was exhibited to him :

"Q. Do you say that you never had in your possession or under your control, a single share of stock, or bond mentioned in this list, Exhibit 1 for Identification, of this date?

A. Is that what you showed me before, this one here?

Q. Yes.

A. I cannot answer, on the ground it may incriminate me.

Q. Well, do you say that you never saw those securities?

A. I cannot answer, for the same reason.

Q. You say you never touched them?

A. I cannot answer for the same reason" (page 47).

To this *refusal* he adhered on September 14th without stating any other reason than his previous refusal:

"Q. Do you say that you never had in your possession or under your control, a single share of stock, or bond mentioned in the list marked Exhibit 1, which has been shown to you in this proceeding?

A. (No answer.)

Q. Do you refuse to answer that?

A. I answered that long ago; and I refuse again.

Q. Do you say that you never saw those securities?

A. I refuse to answer.

Q. Do you say you never touched them?

A. (No answer)" (pages 152-3).

(2) Arndstein's denial that he had seen certain stocks and bonds in the possession of any one compared with his subsequent refusal to testify.

On May 15th, he gave the following testimony which in a somewhat different regard, dealt with the same specifically listed stocks and bonds:

"Q. The question is: Did you ever see any of those shares of stock or bonds mentioned on this list, which is Exhibit 1 for Identification of this date, in the possession of any other persons, or in anyone else's control?

A. No, sir.

Q. At any time or place?

A. No" (page 48).

On September 14th he *refused* to answer the same question, this time without even troubling to reiterate "for the same reason";

"Q. Did you ever see them in anyone else's possession?

A. (No answer.)

Q. Do you refuse to answer?

A. Yes, I refuse" (page 153).

(3) Arndstein's denials and partial disclosures concerning his bank accounts and safe deposit boxes, compared with his subsequent refusal to testify.

On May 15th he testified as follows concerning his bank accounts and safe deposit boxes:

"Q. Well, have you? (Meaning have you any bank accounts or safe deposit boxes.)

A. I have two.

Q. Where?

A. One in the Pacific Bank.

Q. A bank account?

A. I have one there, yes; and also a box there. The other box I have jointly, together with my wife, I don't know, the Mortgage Trust Company I think it is.

Q. U. S. Mortgage & Trust Company?

A. Yes.

Q. You say you have not any other bank account or safe deposit boxes?

A. No, sir.

Q. And you have not had any in the past two or three years?

A. Oh, yes. I did have one in the Harri-man Bank. But I was only in that bank a short while (pages 35-6).

* * * * *

Q. Did you ever have, in the past two or three years, any other bank accounts or safe deposit boxes?

A. No, sir.

Q. Either in your own name or anyone else's name?

A. No; none.

Q. How?

A. No; none whatever (page 36).

Q. You say you have not now, and never did have in the past three years, any other bank accounts or safe deposit boxes?

A. That is right.

Q. Directly or indirectly?

A. No.

Q. In your own name, or in the name of anyone else?

A. No; that is right.

Q. Or under your own control, or under the control of someone else; is that right?

A. That is right" (pages 36-7).

Q. Have you any bank account in any other name?

A. No.

Q. Or any safe deposit box in any other name?

A. No.

Q. Did you ever open any bank account in any other name?

A. No.

Q. Or any safe deposit boxes in any other names?

A. No, sir" (pages 39-40).

On September 14th, he *refused* to answer the following question:

"Q. What banks, trust companies, safe deposit companies, or brokers, have you visited since the 10th of February, this year?

A. I refuse to answer" (page 154).

And his general *refusal* to answer "every question that is asked" (page 155) on the ground that it would incriminate and degrade him included the questions:

"64. Have you had access to any safe deposit boxes during the past year?"

"65. Have you had any bank accounts anywhere in the United States during the past year?"

"66. Have you had any safe deposit boxes, either in your name or in anyone else's name anywhere in the United States, during the past year?" (Schedule D, pages 758-9.)

"241. Have you any safe deposit box there? (Referring to the Pacific Bank.)" (Schedule D, page 765.)

"5. Have you had any safe deposit box either in your name or in the name of any other person, to which you had access, anywhere in the United States, during the past year?" (Schedule E, page 766.)

(4) Arndstein's partial disclosure of the possession of money compared with his subsequent refusals to testify.

Arndstein, on May 15th, testified concerning money in his possession since February 22nd:

"Q. Have you had any money in your possession since Washington's Birthday, this year?

A. Yes.

Q. How much?

A. About \$500.

Q. Where did you get it?

A. Where did I get it? I got it from my wife.

Q. Before you left? ..

A. Yes, sir.

Q. And that is all you had?

A. That is all.

Q. You have only had \$500 since Washington's Birthday, this year?

A. Yes" (page 49).

On May 24th he testified further on the same subject:

"Q. Mr. Arndstein you testified that when you left New York in February last you had \$500?

A. Yes, sir. ..

Q. What have you done with it?

A. I have used it up for general expenses.

Q. Where?

A. Well, I cannot exactly say where.

Q. How much of it have you spent?

Mr. Fallon: He just said all of it.

A. All of it" (page 120).

Included in his general *refusals* on September 14 to answer "every question that is asked" are, however, these:

"15. How much money have you in your possession or under your control?" (Schedule A, page 752.)

"59. How much money have you had since the filing of the petition of bankruptcy in this proceeding"? (Schedule D, page 758.)

(5) Arndstein's partial disclosures of his aliases compared with his subsequent refusals to testify.

Concerning the various names he had borne Arndstein gave the following testimony on May 15th:

"Q. Have you been known by any other names?

A. Yes sir" (pages 29-30).

* * * * *

"Q. In what name did you have the box in the Harriman Bank?

A. In the name of Arnold.

Q. J. W. Arnold?

A. J. W. Arnold (page 36).

* * * * *

Q. Well, let us stick to the U. S. Mortgage & Trust Company. You had a safe deposit box there?

A. Yes; jointly, together with my wife.

Q. In what name?

A. Her name and mine.

Q. In what name did you have that; Arnold?

A. Arnold.

Q. J. W. Arnold and wife; is that right?

A. Yes, sir.

Q. In the Pacific Bank you had your bank account in the name of J. W. Arnold?

A. In the name of J. W. Arnold.

Q. And the box, J. W. Arnold?

A. Yes, J. W. Arnold" (page 36).

On the same day, however, he *refused* to answer the question by what other names besides the name of Arndstein he had been known (page 30). And on September 14th his general *refusal* to answer "every question that is asked" included the following questions:

"1. What other names? (Referring to the fact that the bankrupt had been known under various names.)

"2. By what other names have you been known besides Jules Arndstein"? (Schedule D, page 756.)

"167. Did you ever go under any other name"? (Schedule D, page 762.)

"202. Have you been known as George"? (Schedule D, page 763.)

(6) Arndstein's partial disclosure that he had been at the Hotel Winton in Cleveland compared with his refusal to testify whether he had a room there.

On May 18th Arndstein identified one of the places where he had been during his mysterious absence.

"Q. Were you at the Hotel Wilton at any time during the past three months?

A. At the Winton?

Q. At the Winton, Cleveland.

A. Yes.

Q. More than once?

A. No; only once" (page 113).

His general refusal to answer all questions asked on September 14th included this one concerning his presence at the Winton Hotel in Cleveland:

"Did you have a room there"? Question 187, Schedule D, page 763.)

(7) Arndstein's denials and disclosures as a whole.

Upon several specific topics Arndstein, then, waived his privilege and cannot justify his refusals to answer. In truth the waiver went further than this. *"The privilege exists for the sake of the criminating fact as a whole"* (4 Wigmore, Sec. 2276, page 3151). Testimony as to part is a waiver as to the whole.

The "criminating fact as a whole" in the instant case is the disposition of stocks and bonds. Arndstein's categorical denials that he had ever had a share of stock in his possession or under his control in his life; that he had ever had a negotiable bond in his possession or under his control; that he had ever had a non-negotiable bond in his possession or under his control for years—all these denials opened the way for the most searching examination upon the "criminating fact as a whole." It was the official duty of the trustee and his attorney to make this examination. It was the statutory duty of the bankrupt to respond to this examination unless it incriminated him, and his own sworn testimony showed it could not incriminate him. Arndstein might have refused to testify at all about his ownership or disposition of stocks and bonds. He chose, however, to give testimony upon the point and he could not thereafter refuse to answer questions whose purpose it was to search this very matter to the bottom.

POINT IV.

The Court, not the witness, is the judge whether a possibility of incrimination exists. It is plain that some of the questions Arndstein refused to answer could not have incriminated him. This is apparent in some instances from the character of the questions themselves; in some instances from the answers given to other questions.

(1) Arndstein's assertion that his answers would incriminate him is not conclusive. It was correctly overruled wherever it appeared either from the nature of the question or from his previous testimony that his answers would not, in truth, have that effect.

The witness is not in the first instance the sole judge whether his answer will incriminate him. He must first show to the Court that a responsive answer *may*, in the surrounding circumstances, have that effect. Then, and not till then, does the decision whether his answer will in fact tend to incriminate him rest with the witness himself. The relation between the general obligation to testify and the special privilege against testifying to incriminating matters was stated by Chief Justice Marshall (*In re Willie*, 25 Fed. Cases, 14, 692e, pages 38, 39) in language which this Court in *Mason vs. U. S.* (244 U. S., 362, 364), made its own:

"When two principles come in conflict with each other, the Court must give them both a

reasonable construction, so as to preserve them both to a reasonable extent. The principle which entitles the United States to the testimony of every citizen, and the principle by which every witness is privileged not to accuse himself, can neither of them be entirely disregarded. They are believed both to be preserved to a reasonable extent, and according to the true intention of the rule and of the exception to that rule, by observing that course which it is conceived courts have generally observed. It is this: When a question is propounded, it belongs to the Court to consider and to decide whether any direct answer to it can implicate the witness.' ”

This Court in the same case laid down the principle “that witnesses certainly” are

“not relieved from answering merely because they declared that so to do might incriminate them” (244 U. S., at pages 366-7).

See the statements in

Ex parte Irvine, 74 Fed., 954, 961 (Opinion by Taft, C. J.) ;

In re Naletsky, 280 Fed., 437, 443.

Where there is nothing before the Court to show a possibility of self-incrimination, the witness must be held to answer the question.

Elwell vs. U. S., 275 Fed., 775, certiorari denied 257 U. S., 647 ;

Rosendale vs. McNulty, 23 R. I., 465.

Bradley vs. Clark, 133 Cal., 196.

In the *Elwell* case the Court said:

"The plaintiff claimed before the grand jury, and he is here claiming, not only the right to refuse to make answers that might tend to incriminate him, but also the right in himself, and not in the court, to determine what might or might not tend to incriminate him. This precise question was before the Supreme Court of the United States in *Mason vs. U. S.*, 244 U. S., at page 365, and determined adversely to plaintiff's contention. * * * The plaintiff expressly refused to give any information which would enable the court to determine whether his answer to the question as to who wrote the article would tend to place the witness in peril. Under such circumstances, it was the duty of the District Court to insist upon the question being answered."

A fortiori, when the Court sees that *there can be no danger* to the witness in answering he must be held to answer.

The trial court may indeed put questions designed to bring out facts which will test the claim of privilege provided that inquiry "does not" itself "invade" the witness's "immunity" (*McGorray vs. Sutter*, 80 Ohio St., 400). It may, therefore, of course, consider the witness's answers to other questions (*Mason vs. U. S.*, 244 U. S., at page 367).

The witness is then not the sole judge whether or not his answer will incriminate him. The Court is to determine whether or not danger of incrimination exists. The test of danger again, is well defined. In the *Mason case* (244 U. S., at pages 365-

366), this Court said, quoting from *The Queen vs. Boyes* (1 B. & S., 311, 329-330):

“Further than this, we are of opinion that the danger to be apprehended must be real and appreciable, with reference to the ordinary operation of law in the ordinary course of things—not a danger of an imaginary and unsubstantial character, having reference to some extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct. We think that a merely remote and naked possibility, out of the ordinary course of the law and such as no reasonable man would be affected by, should not be suffered to obstruct the administration of justice. The object of the law is to afford to a party, called upon to give evidence in a proceeding *inter alios*, protection against being brought by means of his own evidence within the penalties of the law. But it would be to convert a salutary protection into a means of abuse if it were to be held that a mere imaginary possibility of danger, however remote and improbable, was sufficient to justify the withholding of evidence essential to the ends of justice.’”

So, too, in *Heike vs. U. S.* (227 U. S., 131), it was tersely remarked that

“the constitutional protection is confined to real danger.”

To the same effect is *Ex parte Irvine, supra*.

From the principle—a principle true as matter of definition—that there is no privilege as to answers manifestly not incriminating, there follows

a practical corollary. If the trial judge, who knows the whole case and its atmosphere, rules that a given answer is not incriminating, his discretion will not be lightly disturbed by an appellate court (*Mason vs. U. S.*, supra, 244 U. S., at page 367; for a collection of authorities and a good statement see *Ex parte Copeland*, 91 Tex. Cr., 549).

Least of all will it be lightly disturbed by an appellate court where the attack upon the ruling is made not by appeal from that ruling or from the contempt order, but collaterally by writ of *habeas corpus*. In the instant case the Commissioner occupied the position of a trial court. In some instances, his ruling was specifically re-enforced by rulings of the District Judge (see Mr. Fallon's admissions at page 118; compare pages 71-72).

The principles to which we have alluded are at once general and elementary. They apply in whatever kind of proceeding a witness claims his privilege. Most cogently do they apply in a bankruptcy case, where the witness is under a statutory direction to testify (Sec. 7, subdivision 9; Sec. 21a) and where the whole statutory apparatus for investigation would be reduced to a nullity unless the bankrupt's claims of privilege were subjected to some test of reasonableness (*In re Naletsky*, 280 Fed., 437, 443).

(2) Inquiries whether Arndstein knew certain persons or knew where they lived could not tend to incriminate him upon any charge, nor could the inquiry whether he had been in gambling houses subject him to any Federal prosecution.

(a) The Commissioner ruled that Arndstein must answer, among other questions, the inquiries (Schedules A-12 and A-13):

"Do you know Randolph Newman, the lawyer?"

"Do you know Nick Cohen" (page 752)?

As these questions were put on the first day (pages 64, 67), it seems upon Mr. Fallon's general admission (page 118), that the District Judge specifically approved this ruling, though he rendered no written opinion. *This Court cannot say upon appeal and in a collateral proceeding that Arndstein could incriminate himself by admitting acquaintance with a member of the bar or even with a layman.*

(b) The same principle applies to many other questions requiring the witness simply to state whether he knew certain named individuals (see numerous questions, pages 752, 753-755, 757, 764-765, 767-768). Each of these questions called for an answer "yes" or "no," and had his answer in each instance been "yes," that answer would have gone no further than admitting the mere fact of acquaintance.

It has been specifically held (*Overend vs. Superior Court*, 131 Cal., 280) that no possible answer to the question,

"Do you know the defendant?"

—*the defendant in a criminal case*—could incriminate the witness.

Compare the late case of *Ex parte Hollinway* (272 Mo., 108), in which was held that no answer to the question who gave the witness the information he had published concerning the supposedly secret proceedings of the grand jury, could incriminate him.

(c) The same principle applies again to the question (included in the bankrupt's general refusal to answer—page 155) :

“Q. Do you know under what different names Nick Cohen has been known?” (Question 47, Schedule E, page 768.)

(d) Other questions inquiring whether the bankrupt knew where certain persons lived or knew what their addresses were (pages 759-61, Schedule D, Questions 77, 96, 102, 120, 150) are included in the general refusal to answer (page 155). These questions too literally call for nothing further than “yes” or “no” and certainly not for an incriminating answer.

The Supreme Court of Arkansas declared harmless and required the witness to answer the inquiry (*Ex parte Butt*, 78 Ark.. 262) :

“Q. Do you know where Room 215 in the Fulk Building in the City of Little Rock is?”

(e) Included in the bankrupt's general refusal are the following questions :

“60. Were you at any gambling houses in Cleveland during the past three months?

61. Were you in any gambling houses anywhere in the United States during the past six months?” (Schedule E, page 769.)

No charge of gambling was pending against the bankrupt, nor, so far as we know, could he be held liable before any Federal Court on any such charge. Certainly neither the answer “yes” nor “no” could have tended to incriminate him on the charge of

concealing assets, the only criminal liability involved in the case. (The possibility of prosecution in some State Court gives no privilege against answering in a federal tribunal [*Hale vs. Henkel*, 201 U. S., 43, 68-69; *Jack vs. Kansas*, 199 U. S., 372.])

In *Mason vs. U. S.* (244 U. S., 362), this Court considered a claim of privilege with respect to the questions:

"Was there a game of cards being played on this particular evening at the table at which you were sitting?

"Was there a game of cards being played at another table at this time?"

These questions had been asked of the witness Mason at a grand jury investigation of a charge of gambling against others. Mason had already testified to his presence in the billiard parlors where the defendants were arrested. The trial Court's ruling that the answers to these questions would not tend to incriminate the witness was sustained by this Court.

In re Richards (Fed. Cas. 11769, opinion by Blatchford, J.) is in accord with respect to questions about gambling put to a bankrupt upon his examination.*

*While the non-incriminating quality of the foregoing questions is settled by American decisions the result is even more palpably correct upon the English theory of waiver (*supra* page 26). Upon the theory that a witness who has once testified can stop his story at any point that seems to him a point of danger, the utter safety of any possible replies to the inquiries here considered is too clear for argument. The adoption of a rule more liberal to the witness upon the issue of waiver than the prevailing American rule, compels the application of a more stringent test of what can be an incriminating answer.

(3) Arndstein's assertions that he could not answer certain questions about his property without incriminating himself are shown by his previous testimony to have been false.

We have considered some questions whose intrinsic quality shows that they could have been safely answered. It remains to consider a group of questions whose innocuous character is shown by other answers of Arndstein himself.

(a) The bankruptcy petition was filed on February 20, 1920 (page 8). He testified that since Washington's Birthday he had had only \$500 in all (page 49). In the circumstances the Commissioner properly concluded that the witness could safely answer the question,

"Aside from the \$500 you spoke of, have you had any money or property in your possession, or held by you, since the filing of the bankrupt petition" (Schedule A-7, page 751).

The only possible answer to the question Arndstein could give, assuming that his other testimony was correct, would be "No."

(b) The same principle applies to a question concerned with the possession of property before bankruptcy. After careful deliberation over the question of time Arndstein (pages 89-91) assented to the statement that "for a period of at least seven months immediately preceding the filing of the petition of bankruptcy in this proceeding," he "did not have any property of any nature, kind or description" (pages 91-2). The petition in bankruptcy was filed, as we have just said, on February 20th

(page 8) and seven months theretofore would go back to August 20, 1919. It follows that the question

“Were you in October, 1919, in the possession of any property” (Question 5, Schedule A, page 751)—

included in the general refusal to answer (page 155), would have to be answered “no.”

(c) On September 14th, he was asked:

“Did you buy or sell any shares of stock or bonds at any time during the past year” (page 152)?

He refused, giving “the same reason” (page 152)—that his answer would “degrade and incriminate him” (page 150). Yet he had twice before (pages 46-7, 135) denied that he had had any shares of stock or bonds *in his possession or under his control* during the same period of time, and these denials indicate plainly enough that his answer to the more specific question must also have been “no.”

In these instances it is evident from Arndstein's own testimony that his answers would not have incriminated him, and the Court is not obliged to shut its eyes to this testimony. The decision of this Court in *Mason vs. U. S.* (*supra*) is cogent authority on this phase of the subject, too. In that case, Mr. Justice McReynolds remarked that the “wisdom” of overruling a claim of privilege concerning the questions submitted was “well illus-

trated" by even an *enforced* answer later given to the same question (244 U. S., page 367). The holding must be the same where the answers given to more comprehensive questions show that the only possible answer to the questions under consideration must have been a harmless answer.

(d) The same consideration applies to instances in which Arndstein refused to answer questions he had once answered and which were repeated (see (a), (b), (d), (f) and (g), pages 61-6, *infra*).

It might perhaps have been contended before the Commissioner, or even before the District Court, that Arndstein was under no obligation to go on answering essentially the same inquiries more than once. For several reasons, however, no such contention is open to Arndstein in this Court: because the refusals we have here enumerated were put not upon the ground that the questions were redundant, but that the answers might incriminate; because objections to the redundancy of questions are addressed to the discretion of the court of first instance and not to an appellate court; and because this discretion, even had Arndstein tried to invoke it, might well have been exercised against a witness who proved himself to be as evasive and inconsistent as Arndstein.

Precisely supporting these conclusions is Judge Learned Hand's decision in *In re Bendheim* (180 Fed., 918, 920). Overruling a bankrupt's claim of privilege he remarked,

"The question which he subsequently refused to answer was only a question which he had previously answered put in a different form."

POINT V.

The record shows that Arndstein's claims—and particularly his final claims—of privilege were not made in good faith. This appears plainly by comparison of his apparent willingness to testify on the first day of the hearing with his obstinate refusal to give any testimony whatever on the last day; by his gradual yielding to counsel's instructions to claim privilege against many questions which at first he was willing to answer; and by answers and admissions contained in his testimony which plainly contradict his final claim of privilege to the same or similar questions.

Since the constitutional provision is not intended to afford a mere convenient pretext for refusing to testify, the privilege is not extended to one who invokes it in bad faith as a mere subterfuge to avoid answering. This is shown alike by cases in which the claim of privilege is denied and by cases in which it is upheld.

McGorray vs. Sutter, 80 Ohio St., 400;
Ford vs. State, 29 Ind., 541;
In re Cappeau, 198 App. Div., 357;
Lockett vs. State, 145 Ark., 415;
People vs. O'Brien, 176 N. Y., 253;
Janerin vs. Scammon, 29 N. H., 280;

Chamberlain vs. Willson, 12 Vt., 491;
Edmonston vs. Commonwealth, 110 Va.,
 897;

See also *Mason vs. U. S.*, 244 U. S., 362,
 page 367.

It is to insure good faith as well as to guard against a mistaken fear of self-incrimination (*McGorray vs. Sutter*, 80 Ohio St., 400) that the witness is not permitted to be "the sole judge as to whether his evidence would bring him into danger of the law" (*Queen vs. Boyes*, 1 B. & S., 311; quoted in *Mason vs. U. S.*, 244 U. S., 362, 365; see also *Commonwealth vs. Bolger*, 229 Pa., 597); he is required to show the court "that there is reasonable ground to apprehend such danger" before the court can surrender to the witness the duty of "judging for himself of the effect of any particular question" (*Queen vs. Boyes*, *supra*; see also *Elwell vs. U. S.*, 275 Fed., 775, certiorari denied, 257 U. S., 647). It is to insure good faith, again, that the witness who refuses to answer on the ground that his answer will incriminate him, is properly required to state upon oath that his answer will actually have that effect (*Southard vs. Rexford*, 6 Cow., 254), and is liable for perjury if that statement is falsely made (*In re Naletsky*, 280., Fed., 437). On the same principle it has often been held that the privilege must be claimed by the witness himself and cannot be claimed by counsel (*Hale vs. Henkel*, 201 U. S., 43, page 70) and even that counsel may properly be denied the right to argue in support of the privilege (*Rapalje's Law of Witnesses*, Sec. 265, page 437, citing *Thomas vs. Newton*, M. & M. 48 n; *Doe d. Rowcliffe vs. Egremont*, 2 Mo. & R. 386).

Appellant's contention, based on the record as a whole, is that in many instances Arndstein's refusals to answer the questions put to him on September 14th, 1920 (Record, pages 150-155)—the questions which the Court had directed him to answer (Order of September 1; pages 774-5)—was not due to his own conscientious belief that he could not safely answer, but to counsel's instructions that he could with impunity refuse to answer, and that the answers which he had given earlier in the examination show that his claim of privilege on September 14th was not made in good faith. The impression of a complete absence of good faith is most strongly conveyed by the 125 pages of Arndstein's testimony as a whole, especially when those pages are read continuously. The extracts we give below, however, should serve to show his confessed inconsistencies and self-contradictions.

(1) Arndstein's apparent willingness to testify at the opening of the hearing on May 15th, compared with his obstinate refusal to answer every question put to him on September 14th.

Instructive on the question of good faith is the progression which the record shows from apparent willingness at the opening of the hearing to answer all questions, except such as the bankrupt really feared would incriminate him, to confirmed refusal to answer any questions at all on September 14th. Compare for instance with the mechanical reiteration, "I refuse to answer, for the same reason," on the latter date (pages 150-154), the following questions and answers on May 15th:

"Q. Have you been known by any other names?

A. Yes, sir" (pages 29-30).

"Q. Did you go to any bank or trust company this morning?

A. No, sir" (page 33).

"Have you any stocks or bonds now?

A. I never had any in my life. I never owned a share of stock in my life. I never even saw a genuine certificate in my life. I never possessed one in my life, any negotiable stock" (page 37).

"Q. Did you ever have any stocks or bonds in your possession or under your control, at any time during the past year?

A. I never owned a share of stock; I never had a share of stock that was good, to my knowledge, in my life.

Q. What do you mean by 'good'?

A. Well, anything that was negotiable.

Q. What?

A. Nothing negotiable.

Q. Did you have any that were not negotiable?

A. Yes, I bought some years ago.

Q. We are talking about the past twelve months.

A. No, sir.

Q. Have you had any stocks or bonds in your possession or under your control at any time during the past year?

A. I just answered that.

Q. No; I did not get the answer. (Question read.)

A. I answered that; I said no" (pages 46-7).

Note also the freedom with which he testified on May 15th concerning his bank accounts and safe deposit boxes (pages 35-6), and gave answers exculpating his relatives (pages 33-5, 37-40), his wife (pages 40-42) and his wife's relatives (pages 40-42) from any charge of aiding in the secretion of assets.

(2) Gradual substitution of counsel's instructions for the witness's own conscience.

We have noted the bald fact that Arndstein, although notified of his privilege at the beginning, was at that time willing, and was stubborn at the last. The explanation lies in the interference of his counsel. The interference began with *sotto voce* promptings how particular questions should be answered. These are marked in the record by the protests of the trustee's lawyer (see pages 31, 32, 37).* Mr. Fallon was then directed to sit further away from the bankrupt (page 37), but more

*The coaching of Arndstein by his counsel was early noted by the participants in the hearing. At page 31 the trustee's attorney asked "Is this counsel going to be allowed to tell this man what to answer?" And the Commissioner said "No." Trustee's counsel made the same point shortly thereafter on page 32 and asked to have the witness directed to sit further from his counsel. At page 37 appears the following colloquy:

"Mr. Myers: Your Honor, I wish to call attention to the fact, and I ask that this counsel be separated from this witness, or I will not go on with the examination in this room.

than once afterwards he succeeded in having a private word with him between the time that a question was asked and an answer required (see pages 50, 87, 107, 132). For the most part, his interference took the form of objections and argument addressed to the Commissioner. If these tactics did not always succeed with the Commissioner, they did with the witness, who almost invariably took the cue and stood on his privilege.

(a) Mr. Fallon stopped Arndstein from answering the question "where" he had been traveling, by protesting to the Commissioner:

"Now I ask your Honor to instruct the witness that he may claim his privilege to that question" (page 50).

This led to a long dispute concerning the propriety of the question, after which the witness finally took the ground that the answer would "degrade" him and declined to give it (page 51).

The Commissioner: Mr. Fallon, you had better shift your chair, and get away, and not address the witness at all. Do not do that.

Mr. Myers: I will not go on until he gets away from this witness.

The Commissioner: Mr. Arndstein, just change places with this man.

The Witness: I might say that Mr. Fallon is not coaching me; I am not listening to it, sir.

The Commissioner: I saw him.

Mr. Fallon: I have advised the witness to refuse to answer all these questions.

(The Commissioner directs Mr. Fallon to sit further away from the witness.)

Mr. Fallon: I promise your Honor that we won't come in personal contact again."

(b) Having been instructed by the Commissioner (page 84) to answer the question:

"Have you any money in your possession or under your control" (page 83),

and having thereupon answered

"Yes, I have" (page 84),

he was asked

"How much"?

His counsel intervened immediately with the objection

"Now, if your Honor please, *we* object to how much * * *" (page 84),

followed by a lengthy argument. The witness was eventually directed to answer, but refused, and persisted in the refusal on the ground that it would incriminate him (page 84).

(c) Arndstein was asked the question (page 131):

"Aside from the \$500 you spoke of, have you had any money or property in your possession or held by you, since the filing of the bankruptcy petition"?

and replied,

"I answered that at the last hearing, sir."

Mr. Fallon thereupon called for a ruling as to whether the question was privileged and himself volunteered:

"*He* refuses to answer."

After this statement of counsel, the witness being asked,

"On what ground?"

answered,

"The same ground, sir; tend to incriminate me."

(d) Lengthy arguments of counsel in support of the witness's refusals to answer appear at pages 67, 69, 78, 110, 111, etc.

Besides these plain indications that Arndstein was influenced and encouraged by his counsel to claim his privilege in many instances where he himself had no wish to do so, there are many flagrant cases in which his counsel assumed the right to dictate to him what his answers must be:

(e) At page 75, the witness answered, or at least indicated his willingness to answer the question:

"Q. Do you know Nick Cohen?

Mr. Myers: Will you answer that?

A. Yes, sir";

whereupon Mr. Fallon immediately ordered the witness to change his answer, saying,

"No; you refuse to answer."

(f) "Q. Have you any property of any nature, kind or description since the filing of the petition in bankruptcy in this proceeding?

* * * * *

The Witness: Yes; I have had a little money from time to time.

Mr. Fallon: No. I ask that your Honor tell him he can answer that just yes or no; not about a little money" (page 92).

(h) To the same effect are the peremptory instructions, "Now, don't answer that," at page 94, and again, "Don't answer that," at page 130.

(i) Counsel's assumption that the decision whether to answer rested with him rather than with the witness appears also in such statements as these:

"Well then, *I do not mind* if he answers that.

* * * Now answer that" (page 87).

"I do not mind his answering it" (page 112).

and again

"We also refuse to answer that" (page 140).

(j) The influence of counsel is seen again in the answers "I do not know" (pages 87-8, 89, 113), given after counsel's objection, ostensibly directed to the Commissioner, had suggested such answers.

(3) **Inconsistency between refusals to answer and answers given.**

We have in general terms remarked Arndstein's progression from readiness to obstinacy and have stated its explanation. It remains to note more specific contrasts. Arndstein's own earlier answers will show that some of his refusals to answer on September 14th could not have been made in good faith.

(a) At pages 35-6 he testified, upon being asked whether he had any safe deposit boxes:

"A. I have two.

Q. Where?

A. One in the Pacific Bank.

Q. A bank account?

A. I had one there, yes. And also a box there. The other box I have jointly, together with my wife, I don't know, the Mortgage Trust Company I think it is.

Q. U. S. Mortgage & Trust Co.?

A. Yes.

Q. You say you have not any other bank account or safe deposit boxes?

A. No, sir."

Yet at page 95 we find him refusing to answer questions about his bank account and safe deposit boxes:

"Q. Have you had any bank accounts anywhere in the United States during the past year?

A. I cannot answer that, for the same reason."

* * * * *

"Q. Have you had any safe deposit boxes, either in your name or in anyone else's name, anywhere in the United States, during the past year?

A. I cannot answer that, for the same reason."

And at page 108, he again refused to testify on the same subject:

"Q. Do you know anyone who has an account in the Pacific Bank?

A. I cannot answer that for the same reason,"—

although later, on May 24th, he *admitted remembering the earlier testimony* that he himself had an account in the Pacific Bank. See the following questions and answers at page 136:

"Q. You testified on your former examination that you had an account in the Pacific Bank, did you not, page 13 (2076) of the record?

A. (No answer.)

The Commissioner: Mr. Arndstein, you know whether you did or not.

The Witness: Yes, sir."

(For a repetition of the claim of privilege on Sept. 14th, see page 765, Schedule D, Questions 240, 241, and page 155.)

(b) At page 85, he was asked concerning money which he testified (pages 83-4) he had in his possession:

"When did you get it?"

He answered:

"I cannot say, for the same reason."

He was then asked:

"Did you get it this year?"

and answered as before,

"I cannot say, for the same reason."

At page 139 the examiner, referring to the earlier questions and answers on this subject, again asked,

"When, Mr. Arndstein, did you get that money?"

His answer was:

"I do not know, sir."

The examiner again taxed him with the inconsistency between this answer and his former claim of privilege:

"Q. That is the same question, in substance, that you refused to answer on the ground that it might incriminate you?"

And Arndstein admitted it:

"Yes, sir" (page 139).

(For repetition of the claim of privilege on Sept. 14th, see page 155 and page 758, Schedule D, Question 46.)

(c) At page 75, he was asked and answered:

"Q. (Question read as follows): Do you know Nick Cohen?

Mr. Myers: Will you answer that?

A. Yes, sir,"

while at page 151 (September 14th) to the same question:

"Q. Do you know Nick Cohen?"

his response was,

"I refuse to answer."

(d) We have already noted (pages 31-2, *supra*) the testimony (pages 46 and 47) denying the possession of stocks and bonds:

At page 95 we find the witness setting up the claim of privilege to the same questions he had answered before:

"Q. Have you had any stocks or bonds during the past year, either in your name or possession or under your control?

A. I cannot answer that for the same reason."

At page 135, however, the witness returned to his first answer:

"Q. Have you had, Mr. Arndstein, any stocks or bonds during the past year, in your name or in your possession or under your control?

A. No, sir."

(For a repetition of the claim of privilege on Sept. 14th, see page 155 and page 767, Schedule E, Question 20.)

(e) The answer already quoted:

"I never had any in my life. I never owned a share of stock in my life. I never even saw a genuine certificate in my life. I never possessed one in my life, any negotiable stock" (page 37),

is inconsistent with another subsequent claim of privilege:

"Q. I show you a list of securities and ask you whether you ever had any of these securities in your possession or under your control?

A. I cannot answer, for the same reason" (page 46).

(For repetition of the claim of privilege on Sept. 14th, see pages 152-3.)

(f) At page 49 the bankrupt was asked:

"Q. Have you had any property in your possession anywhere since Washington's Birthday this year?"

After a preliminary refusal to answer, and instruction by the Commissioner to answer "Just yes or no," the question was re-read and the witness answered

"No, sir,"

but at page 153 (September 14th) we find the claim of privilege re-asserted:

"Q. Have you had any property in your possession anywhere since Washington's Birthday this year?

A. I refuse to answer, for the same reason."

(g) A comparison of the witness's testimony on pages 47, 48 and 153 shows a similar change from a claim of privilege to an answer "No" and a later return to the refusal to answer:

"Q. Did you ever see them in anyone else's possession?" (Referring to a list of stocks and bonds exhibited to the witness.)

"A. I *cannot* answer that.

Q. Will that degrade you?

A. Yes, sir; both ways; and incriminate" (page 47).

* * * * *

"The Commissioner: That (referring to the same inquiry) will not tend to incriminate him.

The Witness: I *can* answer that.

Mr. Myers: The witness just said he is willing to answer.

The Commissioner: Answer the question.

The Witness: No.

Q. (Question read as follows.) Did you ever see them in any one else's possession? You understand the question? The question is: Did you ever see any of those shares of stock or bonds mentioned on this list which is Exhibit 1 for identification of this date, in the possession of any other person, or in any one else's control?

A. No, sir."

Q. At any time or place?

A. No (page 48).

* * * * *

"Q. Did you ever see them in anyone else's possession?

A. (No answer.)

Q. Do you refuse to answer?

A. Yes, I refuse" (page 153).

(h) He answered the question.

"Q. Have you had any stock or bonds in your possession or under your control at any time during the past year?"—

with emphatic denial:

"A. I answered that; I said no" (page 47),—

a denial repeated at page 135. Contrast with these denials the witness's claim of privilege to the following questions:

"Q. Did you buy or sell any shares of stocks or bonds at any time during the past year?

A. I cannot answer, for the same reason" (page 47).

* * * * *

"Q. Have you at any time since the 1st of October, 1919, sold or transferred any stocks or bonds?

A. I refuse to answer, sir, for the same reason" (page 143).

(For repetition of the claim of privilege on September 14th, see page 152.)

Arndstein's statements that his answers would incriminate him were parts of his sworn testimony and subject to the rules governing perjury and contempt through obstructive perjury (*In re Naletsky*, 280 Fed., 437; *In re Nachman*, 114 Fed., 995; *State vs. Faulkner*, 175 Mo., 546). In its essence then, Arndstein's case in this regard is very like the case of *In re Bronstein* (182 Fed., 349). Hough, D. J., there sustained an order punishing for contempt a witness (the bankrupt's brother) who first testified that he had loaned money to a person suspected of holding the bankrupt's assets, then retracted this statement and finally repeated his original testimony. "The authorities are uniform

that testifying falsely, intentionally vaguely or contradictorily, constitutes a contempt of Court under Section 41" (182 Fed., page 353).

In *In re Fellerman* (149 Fed., 244) the Court held a showing that one of the bankrupts on two occasions six months apart had given contradictory testimony concerning his acquaintance with the alleged transferee of his property sufficient, without more, to justify his punishment for contempt.

Arndstein, from the legal point of view, made matters not better but worse by finally answering some questions which he first met by an obstinate refusal to answer. "The subsequent offer to testify," as was held of another bankrupt, "is an admission that the defendant could have answered the questions without danger to himself" (*U. S. vs. Goldstein*, 132 Fed., 789, page 790; see also *Mason vs. U. S.*, 244 U. S., 362, page 367).

(4) "I do not know" used as an alternative to the claim of privilege.

In the three classes of cases we have just analyzed, the refusals of the witness show by their manner and the attendant circumstances the bad faith which vitiates his claim of privilege. The same quality characterizes some answers which he actually gave. The illustrations which follow will show a consistent policy which counsel finally imposed upon the witness. That policy was in its essence as follows: he would claim privilege whenever it might be helpful to his cause, whether or not there was a real danger of incrimination; and when this claim failed he would profess ignorance.

We have mentioned the answer "I do not know" as a typical answer given at the instance of coun-

sel. We shall see that this answer was often a mere subterfuge, a convenient substitute for an unsuccessful claim of privilege. The same bad faith that inspired the refusals to answer colored the answers given in the following instances:

(a) "Q. How long before the filing of the petition in bankruptcy in this proceeding did you have any property of any nature, kind or description in your possession or under your control?

A. I cannot answer that, for the same reason (referring to the claim of privilege).

The Commissioner: I think that ought to be answered.

Mr. Fallon: Does your Honor direct him to answer that *only if he knows*?

The Commissioner: Well, he presumably is able to take care of himself. I wish you would not prompt him in any way; he is no—he does not need all this help.

A. *I do not know*" (page 89).

(b) Arndstein first testified he did not know from whom his wife had bought an automobile, then refused to answer, "on the ground that it may incriminate me"; heard his counsel remark, "he says he does not know," and finally gave the answer, "I do not know." This extract alone would show that Arndstein and his counsel used a claim or privilege and a profession of ignorance as interchangeable (pages 55-56).

(c) Arndstein first declared himself unable to "answer for the same reason" the inquiry where Nick Cohen lived, then was ordered to answer,

heard the interjection from Mr. Fallon—"if you know," and finally answered that he did not know (page 77).

(d) Important in this regard again is a passage we have already quoted (*supra*, pages 62-3). At page 139 the bankrupt *admitted* that he had just answered "I do not know" to the same question which earlier in the hearing (page 85) he claimed it would incriminate him to answer, the question namely

"When, Mr. Arndstein, did you get that money?"

(e) For another instance of a profession of ignorance in lieu of a claim of privilege see page 62.

In all these instances "I do not know" was either a plain evasion of the question, or—if true—showed conclusively that the witness could not honestly have believed that his answer would incriminate him when he asserted that it would (compare *Mason vs. U. S.*, 244 U. S., 362, page 367). On the first assumption he was punishable for contempt of court (*Lockett vs. State*, 145 Ark., 415); on the latter, for both perjury and contempt.* (*In re*

*Perjury constituting an obstruction of justice is a contempt of court (*Ex parte Hudgings*, 249 U. S., 378). The frequent application of this principle to false or evasive answers given by bankrupts and judgment-creditors is illustrated by *In re Schulman*, 167 Fed., 237, affirmed 177 Fed., 191; *In re Kaplan*, 213 Fed., 753, c. d., 234 U. S., 765; *In re Shear*, 188 Fed., 677; *Ex Parte Bick*, 155 Fed., 908; *In re Fellerman*, 149 Fed., 244; *Berkson vs. People*, 154 Ill., 81; *In re Rosenberg*, 90 Wis., 581.

Giving the answer "I don't know" was held to be a contempt of court in *In re Gitkin*, 164 Fed., 71; *Berkson vs. People*, *supra*; *In re Schulman*, *supra*.

Nuletsky, 280 Fed., 437; *State vs. Faulker*, 175 Mo., 546; *In re Nachman*, 114 Fed., 995.)

The bad faith which characterizes both Arndstein's answers and his refusals to answer and which over and over again inspired his claim of privilege has a two-fold significance upon this appeal. It is in itself, as we said at the outset, a ground for denying his claim. The constitutional privilege is intended for those who fairly use it for their own reasonable protection. It is not designed as an assistance to witnesses who by subterfuge and evasion obstruct the processes of justice (compare *State vs. Lloyd*, 152 Wis., 24, 29). "So strict is the rule that the privilege is a personal one that it has been held in some cases," this court in a leading decision remarked, "that counsel will not be allowed to make the objection" (*Hale vs. Henkel*, 201 U. S., 43, 70).*

The claim is even more readily overruled where it is counsel who by his objection (*Knopf vs. R. R. Co.*, 2 Penne. [Del.], 392), or interruption (*Taylor vs. Wood*, 2 Edw. Ch. [N. Y.], 94) prevents the answer. And the special application of this principle to bankrupt's examinations has been several times judicially noted. (*In re Kross*, 96 Fed., 816; *In re Nachman*, 114 Fed., 995, 997; *In re Naletsky*, 280 Fed., 437; *In re Henschel*, stated in *In re*

*Cases laying down this principle, even where the witness is a party to the litigation, include *In re Knickerbocker Steamboat Co.*, 136 Fed., 956; *In re Nachman*, 114 Fed., 995; *In re Henschel* (claim of privilege made not by bankrupt but by counsel; case not reported, but stated in *In re Knickerbocker Steamboat Co.*, *supra*); *State vs. Wentworth*, 65 Me., 234, 242; *Vineland vs. Maretti*, 93 N. J. Eq., 513; *State vs. Lloyd*, 152 Wis., 24; *State vs. Kent*, 5 N. D., 516; *State vs. Ekanger*, 8 N. D., 559, 562; *People vs. Larsen*, 10 Utah, 143.

Knickerbocker Steamboat Co., 136 Fed., 956, 959.)
The bankrupt, as was said in the *Nachman* case

“is not to be permitted to interpose his constitutional immunity as a shield to every inquiry concerning his business, nor is his counsel permitted to delay or obstruct inquiry by making objections for him.”

In none of the cases cited were the facts anything like as strong as in the case at bar; in none of them were the refusals to answer anything like as numerous; in none of them did counsel not only over and over again state and argue the claim of privilege, but order the witness “Don’t answer that” or even overrule him with “No; you refuse to answer”; in none of them did counsel instruct the witness how to answer in many instances when the claim of privilege was overruled.

Arndstein’s bad faith is then in itself a substantive ground for denying his claim of privilege, especially where the Court’s ruling is attacked collaterally. It also—and heavily—re-enforces our earlier contention that some of the questions he refused to answer could not, by any possibility, incriminate him. The fact that Arndstein would apparently claim anything and deny everything if he thought it would aid his cause is the surest indication that some of his claims of privilege were in fact utterly without basis. The Court is never bound to accept the “naked declaration of the witness” that his answer would incriminate (*Bradley vs. Clark*, 133 Cal., 196); least of all should it accept such a declaration from such a witness as Arndstein is revealed by this record to be.



Arndstein cannot have his discharge by *habeas corpus* if he left one single proper question unanswered. Some questions that he refused to answer were, in the opinion of the Commissioner who conducted the hearing and upon general principles of law, plainly not incriminating; some were shown not to be incriminating by Arndstein's own sworn answers to other questions. Bad faith inspired alike his claims of privilege and his professions of ignorance. There was waiver of the privilege as to the most important specific issues and as to the incriminating fact as a whole. As to many or most of his refusals, Arndstein could not in the circumstances have had relief by direct appeal from the order adjudging him in contempt. Still less can he succeed in attacking that order collaterally by writ of *habeas corpus*.

The order sustaining the writ should be reversed, the writ dismissed, and the prisoner remanded to custody.

Respectfully submitted,

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SAUL S. MYERS, }
WALTER H. POLLAK, } Special Assistants
 } to Attorney-General.

Supreme Court of the United States.

OCTOBER TERM, 1922.

No. 404

THOMAS D. MCCARTHY, UNITED
STATES MARSHAL FOR THE
SOUTHERN DISTRICT OF NEW
YORK,

Appellant,

vs.

JULES W. ARNSTEIN,
Respondent.

During the course of the argument, for the first time, the jurisdiction of this Court in this case upon this appeal was brought into question.

The arguing counsel for the appellant not having been advised that this question would be raised and not having any doubts as to jurisdiction, had not the authorities upon the subject at his hand and did not therefore render the assistance to this court on that question which it is desirable that counsel should render.

Since the question is absolutely vital, counsel have felt impelled, in the very limited time at their disposal, to seek for such authorities as cast

light upon the situation and as will aid the court in reaching a proper determination.

It will be recalled that this same subject matter was brought before this court by the respondent Arndstein in a proceeding against the present appellant at the juncture of this case where Judge Manton sitting in the United States District Court for the Southern District of New York refused to issue a writ of habeas corpus applied for by said Arndstein. Judge Manton was simply enforcing the order of Judge Augustus N. Hand, requiring Arndstein to answer.

Mr. Justice McReynolds, writing the opinion for this court, stated that the writ was refused in the court below upon the theory that by filing schedules without objection the bankrupt waived his constitutional privilege and could not therefore refuse to reply when questioned in respect thereto.

He held, as a matter of law, that this was erroneous and that the schedules standing alone did not amount to an admission of guilt or furnish clear proof of crime and that the mere filing of them did not constitute a waiver of right to stop short whenever the bankrupt could fairly claim that to answer might tend to incriminate him.

The decision of this court was that the judgment below must be reversed and the cause remanded for further proceedings in conformity with that opinion.

Subsequently, upon the application of the Trustee in Bankruptcy, asking to be allowed to intervene and to have a re-argument and to have the entire record certified to this court, Mr. Justice McReynolds again spoke for this court and, after stating that the court below (meaning Judge Manton as just referred to) heard the case as upon

demurrer and held the petition for habeas corpus insufficient, referred to the previous judgment of the Supreme Court and stated, "The mandate only requires the Trial Court to accept our decision upon the point of law, to issue the writ and then to proceed as usual. If the petition does not correctly set forth the facts, or if proper reasons exist for holding the prisoner not shown by the petition, neither our opinion nor mandate prevents them from being set up in the return and duly considered."

Subsequent to these proceedings, the writ of *habeas corpus* was issued and a full return thereto made by the appellant herein.

In disposing of the issues raised Judge A. N. Hand among other things, said:

"Now it might have been reasonably contended before the decision of the Supreme Court that the answers to these questions laid the foundation for a very general cross examination about the property of the witness, where it then was, or what had become of it."

But he did not give effect to what he has just stated might reasonably be contended, because of the deduction which he made as to the meaning of the decision of the Supreme Court on the Arndstein appeal of which we have just spoken.

The expressions contained in Mr. Justice McReynolds' two memorandums of opinions above referred to seemed and seem to us to be so entirely clear that we are unable to understand how Judge Hand had any difficulty in understanding and properly applying them.

But it is obvious from what he said that he did misconstrue and misunderstand the opinions of this court and as we respectfully submit, misconstrued and misapplied them.

In this respect what he said was as follows:

"The deduction I have made as to the meaning of the decision of the Supreme Court on the Arndstein appeal is opposed to the weighty arguments made in the interesting and able brief submitted by counsel for the United States Marshal but I can reconcile no other conclusion than the one I have reached with what has been decided by the Appellate Court, and the remedy, if any, must lie in an appeal to that Court which can distinguish the present record by the one already before it, if my failure to do this is erroneous."*

It appears to us that the circumstances of this case call for the application of the doctrine enunciated by this court in the case of *Perkins v. Four-niquet*, 55 U. S. 328, at 330.

After having shown that the appeal brought up proceedings under a mandate issued by the Supreme Court after a previous hearing, Chief Justice Taney at the page last indicated, said:

"This objection (that the appeal will not lie) to the form of proceeding, involves nothing more than a question of practice * * *. If the decree of this court has been misunderstood or misconstrued by the court below, to the injury of either party, we see no valid objection to an appeal to this court, in order to have the error corrected. The question is merely as to the form of proceeding which this court should adopt, to enforce the execution of its own mandate in the court below."

After elaborating his reasons for approving the appeal under the circumstances and stating that the appeal certainly would not stay proceedings, he concluded upon the subject as follows:

* Bold face ours.

"It would be the duty of the Circuit Court, notwithstanding the appeal, to proceed to execute the judgment of this court, unless, as in this case, he entertained doubts of its construction and meaning, and deemed it, therefore, just and equitable to suspend its execution, until the decision of this court could be had in the premises."

This last sentence exactly characterizes, we respectfully submit, the state of mind and the conduct of Judge Hand in the premises because not only does he so state in his opinion but also in the order, at page 794, after sustaining the writ of habeas corpus which would otherwise have the effect of restoring the prisoner to freedom, he further ordered that the prisoner be "paroled in the custody of his counsel * * * pending the hearing and determination of the appeal from this order to the Supreme Court of the United States."

The general principle just alluded to will be found exemplified and dealt with in the following cases:

Metcalf v. City of Watertown, 68 Fed. 859

In re Blake, 175 U. S. 114

James v. Central Trust Co., 108 Fed. 929.

However this may be and whether or not this court should sustain the appeal upon the ground just mentioned, there appears to be no doubt about the propriety of the appeal as a matter of right and independent entirely of the question just dealt with.

In the court below the sole subject matter of consideration was whether or not the respondent here, who was called for examination under Sect.

21-A of the Bankruptcy Act, was justified, under the constitutional provision invoked by him, in refusing to answer the questions propounded to him in such examination.

His contention was that the constitution did so protect him and whether it did or not was the sole subject of inquiry.

The court below, feeling constrained to so decide by reason of what it understood to have been the determination of this court in the same proceeding, so construed the constitution and the Bankruptcy Act as to justify the respondent in his refusals to answer.

In a case which we submit is so closely allied to this in principle as to be indistinguishable, this court has held that an appeal lies *by the custodian* of the committed person from whose custody the committed person has been removed by the decision of the court below.

In *Boske v. Comingore*, 177 U. S. 459 at 465, Mr. Justice Harlan dealt with the doubt expressed on behalf of the person who had been committed, as to whether the Supreme Court could take cognizance of this case upon appeal from the District Court. He adverted to the Act of March 3, 1891, establishing the Circuit Court of Appeals and pointed out that by that Act it was provided that "appeals or writs of error may be taken from the District Courts * * * to this court (the Supreme Court) in certain cases, among others, 'in any case that involves the construction or application of the constitution of the United States.' The present case belongs to that class."

We feel justified in saying that the instant case likewise belongs to that class. There as here, the respondent who was discharged upon habeas

corpus invoked the protection of the constitution against his being restrained of his liberty by the appellant there as here, acting under an order of commitment, and there as here, the judgment of the District Court proceeded upon the ground that the proceedings against him were inconsistent with the laws of the United States (in this case, the Constitution of the United States).

In the Boske case, the contention of the appellant had been throughout that the constitution forbade the given force of law to those regulations adopted by merely executive officers. We think the case is proper here on appeal as one involving the construction and application of the Constitution of the United States. The instant case has exactly those same characteristics and we therefore feel that the same principle should be applied thereto and the appeal sustained.

Further weight is given to this conclusion by what Mr. Justice Brandeis stated in his opinion in the case of *Collins v. Miller*, 252 U. S. 364, at page 365, stating:

“Each party asks to have reviewed the construction given below to provisions of our Treaty with Great Britain The questions presented are therefore of a character which may be reviewed upon direct appeal under Sect. 238 of the Judicial Code. *Charlton v. Kelly*, 229 U. S. 447. But this court has jurisdiction on writ of error and appeal under that section, as under others, only from final judgments. . . .”

The court of its own motion raised the question whether the judgment in that case was final and determined that it was not and therefore the appeals were dismissed for want of jurisdiction. Be-

fore announcing this conclusion, the court entered its opinion as follows at page 371:

"In what has been said we must not be understood as recognizing the British Consul General as the party entitled to appeal from a decision in Collins' favor. (Collins being the person committed.) For the writ of habeas corpus was directed to the United States Marshal who held Collins in custody, and the Marshal was the party in whom rested the right to appeal, if Collins prevailed on final judgment."

Since the court below released Arndstein from the custody of McCarthy, the Marshal, it is a final judgment notwithstanding that for the purpose indicated and previously herein quoted, he paroled him in the custody of his counsel to await the determination of this court. This point was practically decided in the case of *Harkrader v. Wadley*, 172 U. S. 148, at page 162, Mr. Justice Shiras saying:

"We see no merit in the suggestion that the order discharging the prisoner was not a final judgment. It certainly, if valid, took away the custody of the prisoner from the State Court, and put an end to his imprisonment under the process of that court."

In this case, the order of the court below took away the custody of the prisoner from the marshal, released him from confinement and paroled him in the custody of his counsel **pending the determination of an appeal to this court**; hence, if this court should refrain from correcting the error which we allege was made, the prisoner will undoubtedly be, under this final judgment, released from custody.

Counsel regret that what they consider the gravity of this case in its effect upon the general administration of the Bankruptcy Law in the New York district may seem to cause them to be unduly urgent in obtaining a final and adequate decision from this court in the premises. If the determination reached by Judge Augustus N. Hand is not corrected (we of course feeling that it is erroneous and should be corrected) then henceforth the ability to discover assets of and properly administer the estates of bankrupts, certainly in the New York district—and we see no reason why this should not spread throughout the country,—will be seriously impaired and will be practically non-existent.

We therefore most earnestly request this court to retain the jurisdiction which we feel that the appeal vests in it and make final pronouncement on the record.

We have furnished copies of this to opposing counsel, and he has expressly consented to the submission of this memorandum.

JAMES M. BECK,
*Solicitor-General for Appellant,
McCarthy.*

LINDLEY M. GARRISON,
*of counsel to the American Surety Co.
and other Surety Companies.*

SAUL S. MYERS,
Special Assistant to Attorney-General.

No. 404

FILED
APR 11 19

WM. R. STAN

United States Supreme Court.

THOMAS D. MCCARTHY, United States Marshal
for the Southern District of New York,
Appellant,

—against—

JULES W. ARNDSTEIN,
Respondent.

BRIEF FOR RESPONDENT.

Outline of Facts.

The respondent, having been adjudged an involuntary bankrupt, was called before the United States Commissioner for examination under Section 21A of the Bankruptcy Act. He refused to answer a long list of questions upon the ground that it might tend to degrade and incriminate him if he did so.

Thereafter, a motion was made to punish the respondent for contempt, because of his refusal to answer said questions. District Judge Augustus N. Hand upheld the contention of the respondent, and denied the motion to punish him for contempt.

Thereafter and subsequent to said examination and to said motion made to punish respondent for contempt, the respondent filed schedules under oath, pursuant to an order of the court.

Thereafter another motion was made to punish the respondent for contempt, which motion was again denied by the District Court, but the Judge directed him to answer certain questions, holding that by filing the schedules he had waived his constitutional privilege.

Thereafter, upon the respondent's refusal to again answer said questions, he was adjudged in contempt of court and committed to jail.

Subsequently respondent made an application for a writ of habeas corpus, which writ was refused by Hon. Martin T. Manton, Judge of the Circuit Court of Appeals, upon the ground that by filing the schedules respondent had waived his constitutional privilege, and could not thereafter refuse to reply to questions in respect to them.

Upon appeal to this Court, this order was reversed and the writ ordered to issue.

On December 20th, 1920, this Court denied a petition of the Trustee in bankruptcy for leave to intervene for certification of the entire record and for re-argument, holding:

"Our conclusions concerning the constitutional questions presented is so plainly correct that a re-argument will be unprofitable."

Thereafter and on October 31st, 1921, upon a return which set forth all the testimony and proceedings in bankruptcy, Judge Augustus N. Hand made an order sustaining the writ and discharging the prisoner. The present appeal is by the United States Marshal from the order sustaining said writ of habeas corpus and discharging the petition.

POINT I.

The issue of waiver on the present record is exactly the same issue decided by this Court in *Arndstein v. McCarthy* (254 U. S. 71).

This Court in its opinion held:

"The schedules standing alone did not amount to an admission of guilt or furnish clear proof of crime and the mere filing of them did not constitute a waiver of the right to stop short whenever the bankrupt could fairly claim that to answer might tend to incriminate him. See *Brown v. Walker*, 161 U. S. 591, 597; *Foster v. People*, 18 Mich. 266, 274; *People v. Forbes*, 143 N. Y. 219, 230; *Regina v. Garbett*, 2 C. & K. 474, 495."

There can be no difference between written and oral testimony. The fact that in one case the testimony consists of schedules filed by the bankrupt, and in the other case of oral testimony in the form of questions and answers, can make no difference. The bankrupt has the right to stop short whenever he can fairly claim that to answer might tend to incriminate him. In fact, each of the cases cited by this Court in its opinion in the case of *Arndstein v. McCarthy* is a case of oral testimony on the part of the person claiming the privilege.

In the case of *Regina v. Garbett*, 2 C. & K. 474, at p. 479; 1 Den. C. R. — C. 276, it was

settled authoritatively in England by the highest court, which decision has never been modified in any particular, that the witness has the right to claim his privilege at any stage of the inquiry. In this case the witness had testified fully and completely about a criminal transaction and refused to testify concerning his guilt in the transaction. The Court sustained his privilege, saying: "Answering in part is no waiver for a witness. He may claim the privilege at any stage of the inquiry." This decision has been followed by most of the appellate tribunals of the various states.

In *Foster v. The People*, 18 Michigan 266, at page 274, considered the leading American authority on this question, the Court held: "Where he has not actually admitted incriminating facts the witness may stop short at any point and determine that he will go no farther in that direction. He may judge that his protection does not require him to avoid replying concerning some facts when as to others the tendency is or seems to him more direct than incriminating."

In the case of *People ex rel. Fred S. Taylor v. Gerrit A. Forbes*, 143 N. Y., the question of waiver by testifying was presented and a most elaborate review of all the leading authorities made. In this case the one committed for contempt had actually testified that he had in no way participated in bringing about the death of the deceased. After this general statement, and after he had given considerable testimony concerning the affair, he asserted his constitu-

tional privilege to refuse to answer some of the details in connection with the offense. The decision proceeds: "The witness by answering the general questions as to his connection with the affair, whether his answers were true or false, did not waive his right to remain silent when it was sought to draw from him some fact or circumstance which in his judgment might form another link in the chain of facts and capable of being used under any circumstances to his detriment or peril."

Other authorities to the same effect are:

Higdon v. Hurd, 14 Ga. 255;

Chesapeake Club v. The State, 63 Md. 457;

Comm. v. Trider, 143 Mass. 180;

State v. Marshal, 36 Missouri 400;

Lombard v. Mayberry, 26 Nebr. 674,
at p. 690.

All of these cases cited are cases where the person claiming the privilege had been called as a witness and had answered certain questions and then refused to answer other questions upon the ground that to do so might tend to incriminate him.

POINT II.

All the questions which the respondent Arndstein has refused to answer must be held to be questions wherein he would be entitled to refuse to answer on the ground that the answers might tend to incriminate him were it not for the question of waiver, because it has been so adjudicated by Judge Hand in his two decisions.

The opinion of Judge Hand upon the first motion to punish the relator is as follows:

"The bankrupt has refused to answer questions relating to his property, asserting his constitutional privilege. I have no doubt that the answers might furnish information which would render him liable to prosecutions in the federal courts for concealment of assets to which prosecutions alone the privilege extends."

Ensign v. Commonwealth, 227 U. S. 592.

"However undesirable it may be that the bankrupt should be exempt from examination as to the disposition of his property, I find the overwhelming weight of authority sustains the asserted privilege. Indeed only one case of importance (*Mackel v. Rochester*, 102 Fed. at p. 317) seems to deny it and there the Court based its decision upon *Brown v. Walker*, 161 U. S. 591, where the statute gave a broader immunity than Section 7 (9) of the Bankruptcy Act. In this district various decisions upheld the privilege."

In re Shera, 114 Fed. 207;

In re Feldstein, 103 Fed. 269;

In re Kanter, 117 Fed. 356.

"See also *Carey v. Donohue*, 209 Fed. 328, at page 332, where the Court of Appeals of the Sixth Circuit sustained the bankrupt's right to refuse to answer. See also:

In re Scott, 95 Fed. 815;

In re Rosser, 96 Fed. 305;

In re Nachman, 114 Fed. 995;

U. S. v. Goldstein, 132 Fed. 789;

In re Walsh, 104 Fed. 518;

U. S. v. Rhodes, 212 Fed. 518.

"In view of the foregoing body of authority I must sustain the privilege.

The decisions of the Supreme Court in *Matter of Harriss*, 221 U. S. 274, and *Johnson v. U. S.* 228, U. S. 457, in my view distinctly involve the existence of a general privilege on the part of the bankrupt. Justice Holmes said that he could not prevent the use of his books in a criminal proceeding because they no longer belonged to him and were not produced by him but by the trustee. The opinion reads:

'A party is privileged from producing the evidence but not from its production. The transfer by bankruptcy is no different from a transfer by execution of a volume with a confession written on the fly leaf.

It is true that the transfer of the books may have been against the defendant's will but it is compelled by the law as a necessary incident to the distribution of his property not in order to obtain criminal evidence against him. Of course a man cannot protect his property from being used to pay his debts by attaching to it a disclosure of crime. If the documentary confession comes to a third

hand *alio intuitu* as this did, the use of it in court does not compel the defendant to be a witness against himself.

"If the bankrupt had possessed no general privilege under the Fifth Amendment, why was all this refinement of reasoning necessary to sustain the use of his books before the Grand Jury in *Johnson v. U. S.* (*supra*).

The motion to punish for contempt is denied.

June 28, 1920.

A. N. H.,
D. J."

Upon the return to the writ of habeas corpus after the appeal to this Court, Judge Hand held that if the bankrupt had not waived his privilege by answering certain questions, his privilege as to the questions presented on the record should be sustained. The opinion is as follows:

"The Supreme Court has dealt with this writ of habeas corpus and has held that it was not apparent on its face that some of the questions propounded to the petitioner would tend to incriminate him or degrade him in such a sense that he did not have the privilege of declining to answer them. They so held because they were of the opinion that the filing of his schedules in bankruptcy was not in itself and alone a waiver of his privilege. They directed that the writ which had been denied upon the petition should issue and the case should then proceed as usual. Accordingly a return has been filed to the writ setting forth not only the answers, but refusals to answer. Only the questions and the schedules in bankruptcy accompanied the petition. The

schedules, however, denied that he had any property other than a deposit of \$18,000 in the Pacific Bank. If a denial and partial disclosure of some property opened the door to unlimited cross examination the schedules had that effect but the Supreme Court has held otherwise with the schedule before them.

Arndstein was asked the following questions in his examination under Section 21a of the Bankruptcy Act and gave the following answers:

‘Q. Did you ever have any stocks or bonds in your possession or under your control, at any time during the past year? A. I never owned a share of stock. I never had a share of stock that was good, to my knowledge, in my life.

Q. What do you mean by “good”? A. Well, anything that was negotiable.

Q. Did you ever have any that were not negotiable? A. Yes; I bought some years ago.

Q. We are talking about the past twelve months? A. No, sir.

Q. Have you had any stocks or bonds in your possession or under your control at any time during the past year? A. I just answered that.

Q. No; I didn’t get the answer (question read). A. I answered that; I said no.’

“Now it might have been reasonably contended before the decision of the Supreme Court that the answers to these questions laid the foundation for a very general cross examination about the property of the witness, where it then was, or what had become of it. But I am unable to see how the answers differ in effect from the sworn

schedules. These the Supreme Court has held were not such a voluntary disclosure as to the financial condition of the witness as to deprive him of the right to refuse to testify further about his property and to terminate his privilege. The disclosure of the names and travels of a man accused of going under various fictitious names and transporting stolen securities might well tend to incriminate him. If by his denials and partial disclosures he has not opened the door his privilege as to these questions should be sustained. Apparently the Supreme Court has treated an examination of the bankrupt where he has been called as a witness by the other side in a different way from an examination where he has taken the stand and testified in his own behalf. In the latter case under all the decisions the broadest cross examination is proper. The ruling in the Arndstein case would seem to indicate that where the bankrupt does not testify in his own behalf he is at liberty to cease disclosures about his property, even though some have been made, whenever there is any just ground to believe the answers may tend to incriminate him. The deduction I have made as to the meaning of the decision of the Supreme Court on the Arndstein appeal is opposed to the weighty arguments made in the interesting and able brief submitted by counsel for the United States Marshal, but I can reconcile no other conclusion than the one I have reached with what has been decided by the Appellate Court, and the remedy, if any, must lie in an appeal to that Court who can distinguish the present record from the one already before it if my failure to do this is erroneous.

The writ is sustained and the petitioner
is discharged.

July 7, 1921.

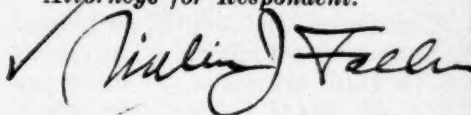
A. N. H.,
D. J."

POINT III.

***The order sustaining the writ should be
affirmed.***

Respectfully submitted,

FALLON & MCGEE,
Attorneys for Respondent.

A handwritten signature in cursive script, appearing to read "William J. Fallon", with a checkmark to its left.

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SUPREME COURT OF THE UNITED STATES.

No. 404.—OCTOBER TERM, 1922.

Thomas D. McCarthy, United States Marshal, for the Southern District of New York, appellant, <i>vs.</i> Jules W. Arndstein.	}	Appeal from the District Court of the United States for the Southern District of New York.
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[May 21, 1923.]

Mr. Justice SANFORD delivered the opinion of the Court.

This is an appeal from an order of the District Court sustaining a writ of *habeas corpus* and discharging the appellee from custody. It involves the same proceeding which was before this Court at an earlier stage in *Arndstein v. McCarthy*, 254 U. S. 71 and 379.

Arndstein, having been adjudicated an involuntary bankrupt and called before a Special Commissioner for examination as to his assets under Section 21a of the Bankruptcy Act, refused to answer four hundred and forty-seven of the questions which were asked him, asserting his constitutional privilege upon the ground that to do so might tend to degrade and incriminate him. The district judge, having "no doubt that the answers might furnish information which would render him liable to prosecutions in the federal courts for concealment of assets," denied a motion to punish him for contempt. After his examination, however, Arndstein filed, without objection, sworn schedules of his assets and liabilities, showing only one item of property, namely, a bank deposit of \$18,000. Thereupon, the district judge, being of opinion that Arndstein thus asserted not only that he had this bank deposit but also that he had no other property, and had thereby become subject to examination as to his property, ordered him to answer four hundred and twenty-six of the former questions. Being recalled for further examination he again refused to answer them, upon the same ground as before. He was then adjudged to be

guilty of contempt of court and committed to the custody of the Marshal for confinement in jail so long as he persisted in his refusal to answer.

He thereupon presented to the District Court a petition for a writ of *habeas corpus*, alleging that he was restrained of his liberty without due process and in violation of the Federal Constitution. This petition was held to be insufficient, and the writ was refused. Upon an appeal by Arndstein this court held that as the schedules did not amount to an admission of guilt or furnish clear proof of crime, they did not constitute a waiver of his right to stop short whenever he could fairly claim that to answer might tend to incriminate him; and the order of the District Court was accordingly reversed and the cause remanded for further proceedings in conformity with the opinion. *Arndstein v. McCarthy*, *supra*, pp. 72, 73. In a supplemental memorandum (p. 379) it was added that this decision only required the District Court to issue the writ and proceed as usual, and that if proper reasons existed for holding Arndstein not shown by the petition they might be set up in the return for consideration.

Thereafter the District Court, in accordance with the mandate of this court, vacated its former order and issued the writ of *habeas corpus*; to which the Marshal made return, exhibiting a transcript of the entire proceedings before the Commissioner. Aside from general denials of the illegality of Arndstein's commitment the only ground set up in the return as a reason for holding him was that, after being notified by the Commissioner of his privilege, he had, before refusing to answer the questions in issue, testified of his own accord, without invoking any privilege, to the very matters with which these questions were concerned, thereby waiving his privilege upon further examination concerning them. Upon a hearing on the petition and return, the District Court was of opinion that, although in certain answers made without objection Arndstein had denied that he had any stocks or bonds in his possession or under his control at any time during the preceding year, the conclusion to be drawn from the decision of this court in reference to the schedules was that his denials or partial disclosures as a witness did not terminate his privilege so as to deprive him of the right to refuse to testify further about his property, and that he was at liberty to cease disclosures, even though some had been

made, whenever there was just ground to believe the answers might tend to incriminate him; and it accordingly sustained the writ and discharged him from custody. The Marshal, by reason of the constitutional question involved, has appealed directly to this Court. Jud. Code, § 208; *Boske v. Commingore*, 177 U. S. 459, 465; *Collins v. Miller*, 252 U. S. 364, 365, 371; *Arndstein v. McCarthy*, *supra*, p. 72.

We find no error in the order of the District Court:

1. The opinion of this court upon the former appeal was not based upon the ground, as the Marshal in effect contends, that schedules filed by a bankrupt are so essentially different from evidence given by him that, whatever their disclosures, they cannot constitute a waiver of his privilege against incrimination when he is called for compulsory examination under the Bankruptcy Act. On the contrary, the sworn schedules were, impliedly at least, assimilated to evidence given by the bankrupt as a witness, the ground upon which they were held not to have waived his privilege against subsequent incrimination being thus stated (p. 72): "The schedules standing alone did not amount to an admission of guilt or furnish clear proof of crime and the mere filing of them did not constitute a waiver of the right to stop short whenever the bankrupt could fairly claim that to answer might tend to incriminate him. See *Brown v. Walker*, 161 U. S. 591, 597; *Foster v. People*, 18 Michigan 266, 274; *People v. Forbes*, 143 N. Y. 219, 230; *Regina v. Garbett*, 2 C. & K. 474, 495."

The four cases thus cited related to testimony given by witnesses and the limit upon their right to stop disclosures. In *Brown v. Walker*, this court said that "if the witness himself elects to waive his privilege . . . and discloses his criminal connections, he is not permitted to stop, but must go on and make a full disclosure"; in *Foster v. People*, the court, while holding that a witness who has voluntarily admitted his guilt of a criminal offense is not protected from further disclosures on the same subject, said that if he has not actually admitted criminal facts, he "may unquestionably stop short at any point, and determine that he will go no further in that direction"; in *People v. Forbes*, it was held that a witness by answering questions exonerating himself in general terms from all connection with a criminal

transaction, does not thereby waive his right to remain silent when it is thereafter sought to draw from him circumstances which might form another link in the chain of facts capable of being used to his peril; and in *Regina v. Garbett*, it was held that it makes no difference in the right of a witness to protection from incriminating himself that he has already answered in part, he "being entitled to claim the privilege at any stage of the inquiry."

In short, it is apparent not only from the language of the former opinion but from its citations that this court applied to the non-incriminating schedules the rule in the cases cited, namely, that *ordinary* where the previous disclosure by a witness is not an actual admission of guilt or incriminating facts, he is not deprived of the privilege of stopping short in his testimony whenever it may fairly tend to incriminate him. And although there is some conflict of authority as to the application of this rule to the examination of witnesses, other than accused persons voluntarily testifying in criminal cases, we see no reason for departing from its recognition in the former opinion, and think that it is the sound rule which should be applied to the involuntary examination of a bankrupt where he is practically in the position of a witness under cross-examination. And since we find that none of the answers which had been voluntarily given by Arndstein, either by way of denial or partial disclosures, amounted to an admission or showing of guilt, we are of opinion that he was entitled to decline to answer further questions when so to do might tend to incriminate him.

2. The Marshal also contends that in many instances the questions which Arndstein refused to answer were plainly of such a character that the answers could not have incriminated him, and that his whole testimony shows that he was not making his claim of privilege in good faith, but largely in obedience to suggestions of his counsel, who in some instances claimed the privilege for him. It is, however, a sufficient answer to this contention that no such reasons for denying the writ were set up in the Marshal's return, or, so far as it appears, brought to the attention of the District Court or ruled upon by it. And in such case we are not called upon, on appeal, to examine, as with a microscope, the multitudinous questions in issue, involved in an unduly protracted examination,

containing many vain and futile repetitions, much of which does not appear to have had any relation to a discovery of assets of the bankrupt but was of such character as to suggest that the underlying purpose was the discovery of evidence to support the charge of grand larceny for which Arndstein had been indicted in the State court; or to determine, as original questions in this court, matters not in issue under the pleadings in the District Court or determined by that court.

Furthermore, the district judge, in ruling in the bankruptcy proceedings on the first motion to punish Arndstein for contempt, had, as shown, specifically stated that he had no doubt that answers to these questions might furnish incriminating information. There was clearly no abuse of discretion in this ruling which would justify us in reviewing it under the writ of *habeas corpus*. And it may be added, that on the first appeal this court also stated that it was "impossible to say from mere consideration of the questions propounded, in the light of the circumstances disclosed, that they could have been answered with entire impunity." *Arndstein v. McCarthy, supra*, p. 72.

The order of the District Court sustaining the writ and discharging Arndstein from custody, is accordingly

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.